

NEC3 DRAFT V1.0
Croydon Facilities Management Services
HARD FM

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Date April 2017 (DRAFT)

FORM OF AGREEMENT

Incorporating the NEC3 Term Service Contract

April 2013

Between

HM Revenue & Customs

And

Interserve (Facilities management) Limited

For the provision of

HARD FACILITIES MANAGEMENT SERVICES

CROYDON REGIONAL CENTRE

THIS AGREEMENT is made the **30th May 2017**

BETWEEN

- (1) H M Revenue and Customs of Ralli Quays, Salford M60 9LA. acting as part of the Crown (the "**Employer**"); and
- (2) Interserve (Facilities Management) Limited (the "**Contractor**"). (Registered Company number: 3253304) whose registered address is:

Interserve (Facilities Management) Ltd Capital Tower
91 Waterloo Road
London
SE1 8RT

BACKGROUND

- (A) The Minister for the Cabinet Office (the "**Cabinet Office**") as represented by Crown Commercial Service, a trading fund of the Cabinet Office, without separate legal personality (the "**Authority**"), established a framework for facilities management services for the benefit of public sector bodies.
- (B) The *Contractor* was appointed to the framework and executed the framework agreement (with reference number **RM1056**) which is dated 28th July 2015 (the "**Framework Agreement**").
- (C) On the 3rd February 2017 the *Employer*, acting as part of the Crown, invited the *Contractor* along with other framework suppliers to tender for *Employer's* facilities management service requirements in accordance with the Call Off Procedure (as defined in the Framework Agreement).
- (D) On the 13th March 2017 the *Contractor* submitted a tender response and was subsequently selected by the *Employer* to provide the *service*.
- (E) The *Contractor* has agreed to perform the *service* in accordance with this agreement and the Framework Agreement. Service Commencement date is **11th July 2017**

IT IS AGREED AS FOLLOWS:

1 Definitions and Interpretation

- 1.1 This agreement (this "contract") incorporates the terms and conditions of the NEC3 Term Service Contract April 2013 which is supplemented and amended in accordance with such information and supplementary provisions as are provided in the Contract Schedules.
- 1.2 The "Contract Schedules" means any one or all of the contract schedules appended to this contract.

2 Entire Agreement

- 2.1 This contract is the entire agreement between the parties in relation to the *service* and supersedes and extinguishes all prior arrangements, understandings, agreements, statements, representations or warranties (whether written or oral) relating thereto.
- 2.2 Neither party has been given, nor entered into this contract in reliance on any arrangements, understandings, agreements, statements, representations or warranties other than those expressly set out in this contract.
- 2.3 Nothing in this clause 2 shall exclude any liability in respect of misrepresentations made fraudulently.

IN WITNESS WHEREOF this contract has been entered into under hand on the date first above written.

Signed for and on behalf of the *EMPLOYER*

By:

Name: Barry Chadwick

Title: Deputy Director Estates Service Delivery

Date: 6th June 2017

Signed for and on behalf of the *CONTRACTOR*

By:

Name: Phil Clark

Title: Director

Date: 30th May 2017

CONTRACT SCHEDULE A

1. CONTRACT SCHEDULE A - CONTRACT DATA PART ONE – DATA PROVIDED BY THE *EMPLOYER*

Statements given in all contracts

1. General

The *conditions of contract* are the core clauses of the NEC3 Term Service Contract April 2013, together with:-

- main Option: A
- secondary Options:

Dispute resolution Option W2

X2 Changes in the law

X4 Call Off Guarantee

X18 Limitation of liability

X19 Task Order

X20 Key Performance Indicators

Y(UK)2 The Housing Grants, Construction and Regeneration Act 1996

Y(UK)3 The Contracts (Rights of Third Parties) Act 1999

- Option Z: *Additional conditions of contract:*

SECTION 1

Z2 Identified and defined terms

Z3 Assignment and novation

Z4 Admittance to Affected Property

Z5 Prevention of fraud and bribery

Z6 Good Industry Practice

Z7	Official secrets
Z8	The Transfer of Undertakings (Protection of Employment) Regulation 2008
Z9	Retention of documents and Audit
Z10	Freedom of Information
Z11	Employer Data
Z12	Protection of Personal Data
Z13	Confidentiality
Z14	Security Requirements
Z15	Malicious Software
Z16	Tax Compliance
Z17	Change of Control
Z18	Conflicts of Interest
Z19	Extension to service period
Z20	Assessing the amount due
Z21	Payment
Z22	Fair payment
Z23	Contractual right of set off
Z24	Compensation Events
Z25	Assessing Compensation events
Z26	Staff Transfer
Z27	Insurance cover
Z28	Professional indemnity insurance
Z29	Termination Table
Z30	Reasons for Termination
Z31	Option W3 Negotiation
Z32	Option W4 Mediation
Z33	Change in the law

Z34	Call Off Guarantee
Z35	Limitation of Liability
Z36	Task Order
Z37	Management and Performance Information

SECTION 2

Z38	Environmental requirements
Z39	Deleted
Z40	Deleted
Z41	Deleted
Z42	The Housing Grants, Construction and Regeneration Act 1996
Z43	Deleted
Z44	Intellectual Property Rights
Z45	Deleted
Z46	Deleted
Z47	Small and Medium Sized Enterprises (SMEs)
Z48	Apprenticeships
Z49	Information Sharing
Z50	Compensation Events (Pensions)
Z51	Deleted

SECTION 3 Additional Clauses Required by HMRC

Z60	Discrimination
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Z61	Compliance with Value Added Tax and Other Tax Requirements
Z62	Health and Safety boilerplate clause
Z63	Publicity, Media and Official Enquiries
Z64	HMRC right to publish contract
Z65	Additional Warranties and Representations

The *Employer* is defined in the form of agreement to which this Contract Schedule is annexed.

The *Service Manager* is: To be confirmed post contract award

The *Adjudicator* is: The Royal institute of chartered Surveyors (As notified by CCS)

The Affected Property is:

**HMRC Croydon
1 Ruskin Square
Croydon
CR0 0BX**

The service is identified in the Service Information.

The Service Information is in Contract Schedule D.

The language of this contract is **English**.

The law of the contract is the **law of England**.

The period for reply is **2 (Two) weeks**

The period for retention is **6 (six) years** following the end of the service period or earlier termination

The Adjudicator nominating body is **The Royal Institute of Chartered Surveyors (RICS)**

The tribunal is litigation unless both parties agree to refer a dispute to arbitration in accordance with Contract Schedule H.

3 Time The *starting date* is **11th July 2017**

The *service period* is **3 years with options to extend of 1 year + 1 year**

5 Payment The *assessment interval* is a **calendar month**

The currency of this contract is: **GBP (pounds sterling)**

The interest rate is **2 %** per annum above the base rate of the Bank of England.

8 Risks and Insurance

The minimum amount of cover for insurance against loss of or damage caused by the *Contractor* to the *Employer's* property is **£5,000,000 (Five Million)GBP (pounds sterling)**.

The minimum amount of cover for insurance in respect of loss of or damage to property (except the *Employer's* property, Plant and materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the *Contractor*) arising from or in connection with the *Contractor's* Providing the Service for any one event is **£5,000,000 (Five Million) GBP (pounds sterling)**.

The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the *Contractor* arising out of and in the course of their employment in connection with this contract for any one event is **£10,000,000 (Ten Million) GBP (pounds sterling)**.

Contract Schedule H – Arbitration procedure

The location of the arbitration is:

RICS

12 Great George Street (Parliament Square)

London SW1P 3AD

Contract Schedule N – Prices for Task Orders

The estimated total value range of Tier One New Works is from **£0 to £1,000**

The estimated total value range of Tier Two New Works is from **£1,000 to £10,000**

The estimated total value range of Tier Three New Works is **£10,000 to £50,000**

The estimated total value range of Tier Four New Works is **£50,000 upwards**

The Comprehensive Liability Threshold is **£1,000**

The Business Critical Events will be agreed in the Business Continuity Plan

Value of Billable Works not requiring Approval:

- **£1,000 (one thousand pounds sterling GBP)**

Contract Schedule O – Payment Schedule

The first Adjustment Date is the **first Working Day following the second anniversary of the *starting date*.**

The Payment Index is the **Consumer Price Index**

Z19 Extension to service period:

The notification period is **six months** prior to the expiry of the current service period

Option X18 is used:

- For any one event, the *Contractor's* liability to the *Employer* for loss or damage to the *Employer's* property is limited to **£5,000,000 (Five million pounds)**
- The *Contractor's* liability for Defects due to his design of an item of Equipment is limited to the higher of:
 - £5,000,000 (five million pounds); or
 - 120% of the total of the Prices (as adjusted in accordance with this Contract) subject to a maximum of £20,000,000 (twenty million pounds).
- The *Contractor's* total liability to the *Employer* for all matters arising under or in connection with this contract, is limited to the higher of:
 - £5,000,000 (five million pounds); or
 - 120% of the total of the Prices (as adjusted in accordance with this Contract) subject to a maximum of £20,000,000 (twenty million pounds).
- The *end of liability date* is **6 (Six) years** after the end of the *service period*.

Option X19 is used:

- The *Contractor* submits a Task Order programme to the *Service Manager* within 10 (ten) working days of receiving the Task Order.

Option X20 is used:

The performance adjustment schedule for Key Performance Indicators is Annex 1, Monthly KPI Measures Model of Contract Schedule L

Option A is used:

The *Contractor* prepares forecasts of the final total of the Prices for the whole of the *service* at intervals no longer than a calendar month

Option Z is used:

The *additional conditions of contract* are contained in Contract Schedule B.

Optional statements

If both parties agree that the *tribunal* is arbitration:

- The *arbitration procedure* and place of arbitration is identified in Contract Schedule H.

If no plan is identified in part two of the Contract Data:

- The *Contractor* submits a first plan for acceptance within 4 (four) weeks of the Contract Date
 - The period for payment is 21 (twenty-one) days

If there are additional *Employer's* risks:

- These are additional *Employer's* risks
 1. Inconsistencies in the asset data provided by the *Employer* and which are discovered by the *Contractor* prior to the *starting date*

If the *Employer* is to provide Plant and Materials:

- The insurance against loss of or damage to Plant and Materials is to include cover for Plant and Materials provided by the *Employer* for an amount of **£50,000 (fifty thousand) GBP** (pounds sterling)

If Option Z47 (Small and Medium Sized Enterprises) is used:

- The SME Percentage is **25% of spend** through the contract

CONTRACT SCHEDULE B

2. CONTRACT SCHEDULE B - OPTION Z: ADDITIONAL CONDITIONS OF CONTRACT

The following provisions supplement, modify or replace the published provisions of the NEC3 Term Service Contract (April 2013) (the “NEC3 TSC”).

SECTION 1: RECOMMENDED FOR ALL CONTRACTS

Option Z 2

Identified and defined terms

Supplement to
NEC3 TSC
clause 11

11.1

At the end of clause 11.1 add:

Terms defined in the form of agreement to which this Contract Schedule is annexed apply to this contract. Terms with capital initials not defined in this contract (excluding the Framework Agreement) have the meaning given to them in the Framework Agreement. Terms for which no interpretation is provided in this contract shall have the meaning ordinarily given to them by the legal profession where appropriate but otherwise shall be interpreted in accordance with their dictionary meaning.

11.2(6)

Amend the definition of ‘Disallowed Cost’ as follows

After the words “and the cost of” insert new fifth and sixth bullet points:

- any claim for
 - discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief, or
 - equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,
- in any case in relation to any alleged act or omission of the *Contractor* and/or any Subcontractor
- any claim that termination of employment was unfair because the Contractor and/or any Subcontractor neglected to follow a fair dismissal procedure.

Delete 11.2 (17) and replace with:

11.2(17)

The Price for Services Provided to Date is the monthly payment calculated in accordance with Contract Schedule O.

Additional Clause 11.2(21)	11.2(21)	Acquired Rights Directive is the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended or re-enacted from time to time
Additional Clause 11.2(22)	11.2(22)	Contractor Personnel is all persons employed or engaged by the <i>Contractor</i> together with the <i>Contractor's</i> servants, agents, suppliers, consultants and Subcontractors (and all persons employed by any Subcontractor together with the Subcontractor's servants, consultants, agents, suppliers and sub-subcontractors);
Additional Clause 11.2(23)	11.2(23)	Data Controller has the meaning given to it in the Data Protection Act 1998
Additional Clause 11.2(24)	11.2(24)	Data Processor has the meaning given to it in the Data Protection Act 1998
Additional Clause 11.2(25)	11.2(25)	Data Protection Legislation means the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner;
Additional Clause 11.2(26)	11.2(26)	Data Subject has the meaning given to it in the Data Protection Act 1998
Additional Clause 11.2(27)	11.2(27)	DOTAS is the Disclosure of Tax avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue & Customs of any specified notable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992.

Additional Clause 11.2(28)	11.2(28)	<p>Employer Data is</p> <ul style="list-style-type: none"> the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are: <ul style="list-style-type: none"> supplied to the <i>Contractor</i> by or on behalf of the <i>Employer</i>; or which the <i>Contractor</i> is required to generate, process, store or transmit pursuant to this contract; or any Personal Data for which the <i>Employer</i> is the Data Controller to the extent that such Personal Data is held or processed by the Contractor.
Additional Clause 11.2(29)	11.2(29)	Employment Regulations are the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the Acquired Rights Directive
Additional Clause 11.2(30)	11.2(30)	Environmental Information Regulations is the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner in relation to such regulations.
Additional Clause 11.2(31)	11.2(31)	FOIA is the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation;
Additional Clause 11.2(32)	11.2(32)	Former Contractor is the contractor supplying services to the <i>Employer</i> before the Relevant Transfer Date that are the same as or substantially similar to the service (or any part of the service) and shall include any sub-contractor of such supplier (or any sub-contractor of any such sub-contractor)
Additional Clause 11.2(33)	11.2(33)	<p>General Anti-Abuse Rule is:</p> <ul style="list-style-type: none"> the legislation in Part 5 of the Finance Act 2013; and any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements and to avoid national insurance contributions.
Additional Clause 11.2(34)	11.2(34)	Halifax Abuse Principle is the principle explained in the CJEU Case C-255/02 Halifax and others.
Additional Clause 11.2(35)	11.2(35)	Information has the meaning given under section 84 of the Freedom of Information Act 2000
Additional Clause 11.2(36)	11.2(36)	Key Performance Indicator is defined in Option Clause X20.1

Additional
Clause
11.2(37)

11.2(37)

An Occasion of Tax Non-Compliance is:

- where any tax return of the *Contractor* submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:
 - A Relevant Tax Authority successfully challenging the *Contractor* under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;
 - The failure of an avoidance scheme which the *Contractor* was involved in, and which was, or should have been, notified to a Relevant Tax Authority under DOTAS or any equivalent or similar regime; and/or
- where any tax return of the *Contractor* submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Contract Date or to a civil penalty for fraud or evasion.

Additional
Clause
11.2(38)

11.2(38)

Personal Data has the meaning given to it in the Data Protection Act 1998

Additional Clause 11.2(39)	11.2(39)	<p>A Prohibited Act is:</p> <ul style="list-style-type: none"> to directly or indirectly offer, promise or give any person working for or engaged by the <i>Employer</i> and/or the Authority or other Contracting Body or any other public body a financial or other advantage to: <ul style="list-style-type: none"> induce that person to perform improperly a relevant function or activity; or reward that person for improper performance of a relevant function or activity; to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this contract; committing any offence: <ul style="list-style-type: none"> under the Bribery Act 2010 (or any legislation repealed or revoked by such Act) under legislation or common law concerning fraudulent acts; or defrauding, attempting to defraud or conspiring to defraud the <i>Employer</i>; or any activity, practice or conduct which would constitute one of the offences listed above if such activity, practice or conduct had been carried out in the UK.
Additional Clause 11.2(40)	11.2(40)	Relevant Requirements are all applicable laws relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010.
Additional Clause 11.2(41)	11.2(41)	Relevant Tax Authority is HM Revenue & Customs, or, if applicable, a tax authority in the jurisdiction in which the <i>Contractor</i> is established.
Additional Clause 11.2(42)	11.2(42)	Relevant Transfer is a transfer of employment to which the Employment Regulations applies
Additional Clause 11.2(43)	11.2(43)	Relevant Transfer Date is, in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place
Additional Clause 11.2(44)	11.2(44)	Request for Information is a request for information or an apparent request under the Code of Practice on Access to government Information, FOIA or the Environmental Information Regulations
Additional Clause 11.2(45)	11.2(45)	Security Policy means the <i>Employer's</i> security policy attached as Annex 1 to Contract Schedule J (Security Policy) as may be updated from time to time

Additional Clause 11.2(46)	11.2(46)	Transferring Employer Employees are those employees of the <i>Employer</i> to whom the Employment Regulations will apply on the Relevant Transfer Date
Additional Clause 11.2(47)	11.2(47)	Transferring Former Contractor Employees are, in relation to a Former Contractor, those employees of the Former Contractor to whom the Employment Regulations will apply on the Relevant Transfer Date
Additional Clause 11.2(48)	11.2(48)	TUPE Surcharge has the meaning given in Schedule P
Additional Clause 11.2(49)	11.2(49)	Working Day is any day other than a Saturday or Sunday or public holiday in England and Wales.

Option Z 3

Assignment and Novation

Supplement to
NEC3 TSC
clause 12

Insert new clauses:

- 12.5 The *Employer* is entitled to assign or otherwise dispose of its rights under this contract or any part thereof to:
- 12.5.1 any Contracting Body; or
- 12.5.2 any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the *Employer*.
- 12.6 The *Contractor* does not, without the written consent of the *Service Manager*, assign or transfer this contract, or any part of, share of or interest in it. In the absence of the *Service Manager*'s written consent no sum of money becoming due under this contract is payable to any person other than the *Contractor*.
- 12.7 The *Employer* is entitled to, and the *Contractor* gives consent to, the novation of this contract or any part thereof to:
- any Contracting Body; or
 - any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the *Employer*;
- upon such terms as the *Employer* proposes, provided that where such novation increases the burden on the *Contractor* pursuant to this contract, the novation shall be a compensation event.
- 12.8 Any change in the legal status of the *Employer* such that it ceases to be a Contracting Body does not affect the validity of this contract. In such circumstances, this contract binds and inures to the benefit of any successor body to the *Employer*.

- 12.9 If this contract is novated to a body which is not a Contracting Body or if a successor body which is not a Contracting Body becomes the *Employer* (both such bodies being referred to in the remainder of this clause as the “transferee”) the transferee is only able to assign, novate or otherwise dispose of its rights and obligations under this contract or any part thereof with the written consent of the *Contractor*.

Option Z4

Admittance to Affected Property

Supplement to NEC3
TSC clause 15

- 15.3 If the *Contractor* is permitted to use equipment Plant and Materials or other such property belonging to the *Employer* (the “Employer’s Property”) the following provisions apply:
- All Employer’s Property remains the property of the *Employer*;
 - Any failure of Employer’s Property shall not be a compensation event unless the *Contractor* demonstrates that the failure was caused by the *Employer’s* undue delay in its repair or replacement.
- 15.4 The *Contractor* submits to the *Service Manager* details of people who are to be employed by him and his Subcontractors in connection with the *service*. The details include a list of names and addresses, the capabilities in which they are employed, and other information required by the *Service Manager*.
- 15.5 The *Service Manager* may instruct the *Contractor* to take measures to prevent unauthorised persons being admitted to Affected Property. The instruction is a compensation event if the measures are additional to those required by the Service Information.
- 15.6 Employees of the *Contractor* and his Subcontractors are to carry an *Employer’s* pass whilst they are on the parts of the Affected Property identified in the Service Information.
- 15.7 The *Contractor* submits to the *Service Manager* for acceptance a list of the names of the people for whom passes are required. The *Service Manager* issues the passes to the *Contractor*. Each pass is returned to the *Service Manager* when the employee no longer requires access to that part of the Affected Property or after the *Service Manager* has given notice that the employee is not to be admitted to the Affected Property.
- 15.8 The Client may, by written notice to the Contractor, refuse to admit onto, or withdraw permission to remain on, the Premises to:

- a) any member of the Staff; or
- b) any person employed or engaged by any member of the Staff,

whose admission or continued presence would, in the reasonable opinion of the Client, be undesirable

- 15.9 The Contractor and the Staff, engaged within the boundaries of the Premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or outside the Premises.

Option Z 5

Prevention of fraud and bribery

Supplement to
NEC3 TSC clause 1

Insert new clauses:

- 19.1 The *Contractor* represents and warrants that neither it, nor to the best of its knowledge any of its employees, have at any time prior to the Contract Date:
- committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
 - been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- 19.2 During the *services period* the *Contractor* does not:
- commit a Prohibited Act; and/or
 - do or suffer anything to be done which would cause the *Employer* or any of the *Employer's* employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements
- 19.3 During the *services period* the *Contractor*:
- establishes, maintains and enforces, and requires that its Subcontractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;

- keeps appropriate records of its compliance with this contract and make such records available to the *Employer* on request;
- provides and maintains and where appropriate enforces an anti-bribery policy (which shall be disclosed to the *Employer* on request) to prevent it and any *Contractor's* employees or any person acting on the *Contractor's* behalf from committing a Prohibited Act.

19.4 The *Contractor* immediately notifies the *Employer* in writing if it becomes aware of any breach of clause 19.1, or has reason to believe that it has or any of the its employees or Subcontractors have:

- been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
- been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
- received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this contract or otherwise suspects that any person or Party directly or indirectly connected with this contract has committed or attempted to commit a Prohibited Act.

19.5 If the *Contractor* makes a notification to the *Employer* pursuant to clause 19.4, the *Contractor* responds promptly to the *Employer's* enquiries, co-operates with any investigation, and allows the *Employer* to audit any books, records and/or any other relevant documentation in accordance with this contract.

19.6 If the *Contractor* breaches Clause 19.3, the *Employer* may by notice require the *Contractor* to remove from Providing the Service any *Contractor* employee whose acts or omissions have caused the *Contractor's* breach.

Option Z 6

Good Industry Practice

Delete clause 20.1 and replace with

Supplement to
NEC3 TSC clause
20

20.1

The *Contractor* Provides the Service in accordance with:

- the Service Information;

- Good Industry Practice; and
- The Framework Agreement.

Option Z 7

Supplement to
NEC3 TSC clause
20

Official secrets

Insert new clauses:

20.6

20.6 The Contractor shall comply with, and shall ensure that its Staff comply with, the provisions of:

- (a) the Official Secrets Acts 1911 to 1989; and
- (b) Section 182 of the Finance Act 1989; and
- (c) Section 18 and Section 19 of the Commissioners for Revenue and Customs Act 2005

20.7 The *Contractor* notifies his Subcontractors of their duties under these Acts.

Option Z 8

The Transfer of Undertakings (Protection of Employment Regulations 2006

Insert a new clause:

Supplement to NEC3
TSC 24

24.3

The Parties agree that:

- where commencement of the provision of the *service* or a part of thereof does not result in a Relevant Transfer, Part C of Contract Schedule I shall apply and Parts A and B of Contract Schedule I shall not apply; and
- Part D of Contract Schedule I shall apply on the expiry or termination of the *service* or any part of thereof.

Option Z 9

Supplement to NEC3
TSC clause 27

Retention of documents and Audit

Insert new clauses:

27.5 The *Contractor* retains throughout the *period for retention*:

- copies of drawings, specifications, reports, calculations and other documents which record the *service*;
- documents and information obtained or prepared by the *Contractor* or any subcontractor in connection with this contract.

The copies are retained in the form stated in the Service Information.

- 27.6 The *Contractor* permits the *Employer* and the Auditor to examine documents held or controlled by the *Contractor* or any Subcontractor.
- 27.7 The *Contractor* provides such oral or written explanations as the *Employer* or the Auditor considers necessary.
- 27.8 This clause does not constitute a requirement or agreement for the purposes of section 6(3) (d) of the National Audit Act 1983 for the examination, certification or inspection of the accounts of the *Contractor*.

Option Z 10

Supplement to
NEC3 TSC clause
27

Freedom of information

Insert new clauses:

- 27.10 The *Contractor* acknowledges that the *Employer* is subject to the requirements of the Code of Practice on Government Information, FOIA and the Environmental Information Regulations. The *Contractor* cooperates with and assists the *Employer* so as to enable the *Employer* to comply with its information disclosure obligations.
- 27.11 The *Contractor*:
- transfers to the *Service Manager* all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information;
 - provides the *Service Manager* with a copy of all Information in its possession, or power in the form that the *Service Manager* requires within five Working Days (or such other period as the *Service Manager* may specify) of the *Service Manager's* request;
 - provides all necessary assistance as reasonably requested by the *Service Manager* to enable the *Employer* to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations; and
 - procures that its Subcontractors do likewise.
- 27.12 The *Employer* is responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the provisions of the Code of Practice on Government Information, FOIA or the Environmental Information Regulations.
- 27.13 The *Contractor* does not respond directly to a Request for Information unless authorised to do so by the *Service Manager*.

- 27.14 The *Contractor* acknowledges that the *Employer* may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of information Act 2000, be obliged to disclose Information without consulting or obtaining consent from the *Contractor* or despite the *Contractor* having expressed negative views when consulted.
- 27.15 If the *Employer* receives a Request for Information relating to information previously considered by the Parties to be Commercially Sensitive Information that is exempt under the FOIA the *Employer* shall:
- a) consider whether the information is, in fact, exempt and;
 - b) consider whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information (unless the Information benefits from an absolute exemption) and;
 - c) consult with the *Contractor* prior to disclosure of the information whenever reasonably practicable.
- 27.15A The *Contractor* ensures that all Information is retained for disclosure throughout the *period for retention* and permits the *Service Manager* to inspect such records as and when reasonably requested from time to time.

Option Z 11

Supplement to
NEC3 TSC
clause 27

Employer Data

Insert new clauses:

- 27.16 The *Contractor* shall not delete or remove any proprietary notices contained within or relating to the Employer Data.
- 27.17 The *Contractor* shall not store, copy, disclose, or use the Employer Data except as necessary to Provide the Services or as otherwise expressly authorised in writing by the *Employer*.
- 27.18 To the extent that Employer Data is held and/or processed by the *Contractor*, the *Contractor* shall supply that Employer Data to the *Employer* as requested by the *Employer* and in the format specified in this contract (if any) and in any event as specified by the *Employer* from time to time in writing.
- 27.19 The *Contractor* shall take responsibility for preserving the integrity of Employer Data and preventing the corruption or loss of Employer Data.

27.20 The *Contractor* shall perform secure back-ups of all Employer Data and shall ensure that up-to-date back-ups are stored off-site in accordance with:

- any business continuity and/or disaster recovery plan created as part of the contract (if any);
- the *Employer's* requirements set out in this contract (if any);
- Good Industry Practice; and
- such reasonable instructions in relation to business continuity and disaster recovery as the *Employer* may notify to the *Contractor* from time to time.

(together the "**BCDR Requirements**")

27.21 The *Contractor* shall ensure that such back-ups are available to the *Employer* at all times upon request and are delivered to the *Employer* at regular intervals prescribed by the *Employer* from time to time acting reasonably.

27.22 The *Contractor* shall ensure that any system on which the *Contractor* holds any Employer Data, including back-up data, is a secure system that complies with the Security Policy.

27.23 If the Employer Data is corrupted, lost or sufficiently degraded as a result of the *Contractor's* Default so as to be unusable, the *Employer* may:

- require the *Contractor* (at the *Contractor's* expense) to restore or procure the restoration of Employer Data to the extent and in accordance with the BCDR Requirements and the *Contractor* shall do so as soon as practicable but in any event not later than such date as is notified to the *Contractor* by the *Employer* acting reasonably; and/or
- itself restore or procure the restoration of Employer Data, and shall be repaid by the *Contractor* any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified the BCDR Requirements; and
- If at any time the *Contractor* suspects or has reason to believe that Employer Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the *Contractor* shall notify the *Employer* immediately and inform the *Employer* of the remedial action the *Contractor* proposes to take.

Insert a new clause

27.24 With respect to the parties' rights and obligations under this contract, the parties agree that the *Employer* is the Data Controller and that the *Contractor* is the Data Processor.

27.25 The *Contractor* shall:

- Process the Personal Data only in accordance with instructions from the *Employer* (which may be specific instructions or instructions of a general nature as set out in this contract or as otherwise notified by the *Employer* to the *Contractor* during the *service period*);
- Process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the *service* or as is required by the *law of this contract* or any Regulatory Bodies;
- implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alternation or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
- take reasonable steps to ensure the reliability of any Contractor Personnel who have access to the Personal Data;
- obtain prior written consent from the *Employer* in order to transfer the Personal Data to any Subcontractors or Affiliates for the provision of the *service*;
- ensure that all Contractor Personnel required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this clause;
- ensure that none of Contractor Personnel publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the *Employer*;
- notify the *Employer* (within five Working Days) if it receives:
 - a request from a Data Subject to have access to that person's Personal Data; or

- a complaint or request relating to the *Employer's* obligations under the Data Protection Legislation;
- provide the *Employer* with full cooperation and assistance in relation to any complaint or request made, including by:
 - providing the *Employer* with full details of the complaint or request;
 - complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the *Employer's* instructions;
 - providing the *Employer* with any Personal Data it holds in relation to a Data Subject (within the timescales required by the *Employer*);
 - providing the *Employer* with any information requested by the *Employer*;
- permit the *Employer* or the Service Manager (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit the *Contractor's* data processing activities (and/or those of its agents, subsidiaries and Subcontractors) and comply with all reasonable requests or directions by the *Employer* to enable the *Employer* to verify and/or procure that the *Contractor* is in full compliance with its obligations under this contract;
- provide a written description of the technical and organisational methods employed by the *Contractor* for processing Personal Data (within the timescales required by the *Employer*); and
- not Process or otherwise transfer any Personal Data outside the European Economic Area. If, after the Contract Date, the *Contractor* (or any Subcontractor) wishes to Process and/or transfer any Personal Data outside the European Economic Area, the following provisions shall apply:
 - the *Contractor* shall submit an early warning to the *Service Manager* which shall be dealt with in accordance with the early warning procedure in clause 16 of this contract and the clauses listed below; and
 - the *Contractor* shall set out in its early warning details of the following:
 - (a) the Personal Data which will be Processed and/or transferred outside the European Economic Area;

- (b) the country or countries in which the Personal Data will be Processed and/or to which the Personal Data will be transferred outside the European Economic Area;
 - (c) any Subcontractors or other third parties who will be Processing and/or transferring Personal Data outside the European Economic Area; and
 - (d) how the *Contractor* will ensure an adequate level of protection and adequate safeguards (in accordance with the Data Protection Legislation and in particular so as to ensure the *Employer's* compliance with the Data Protection Legislation) in respect of the Personal Data that will be Processed and/or transferred outside the European Economic Area;
- in providing and evaluating the early warning, the parties shall ensure that they have regard to and comply with then-current Employer, Government and Information Commissioner Office policies, procedures, guidance and codes of practice on, and any approvals processes in connection with, the Process and/or transfers of Personal Data outside the European Economic Area and/or overseas generally; and
- comply with such other instructions and shall carry out such other actions as the Service Manager may notify in writing, including:
 - (a) incorporating standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the Data Protection Legislation) in this contract or a separate data processing agreement between the parties; and
 - (b) procuring that any Subcontractor or other third party who will be Processing and/or transferring the Personal Data outside the European Economic Area enters into a direct data processing agreement with the *Employer* on such terms as may be required by the *Employer*, which the *Contractor* acknowledges may include the incorporation of standard and/or model clauses (which are approved by the European Commission as offering

adequate safeguards under the Data Protection Legislation).

- 27.26 The *Contractor* shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this contract in such a way as to cause the *Employer* to breach any of its applicable obligations under the Data Protection Legislation.

Option Z 13

Supplement to
NEC3 TSC
clause 27

Confidentiality

Insert a new clause

- 27.27 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this contract, each party shall:

- treat the other party's Confidential Information as confidential and safeguard it accordingly; and
- not disclose the other party's Confidential Information to any other person without the owner's prior written consent.

- 27.28 The clause above shall not apply to the extent that:

- such disclosure is a requirement of the *law of the contract* placed upon the party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause Z17 (Freedom of Information);
- such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
- such information was obtained from a third party without obligation of confidentiality;
- such information was already in the public domain at the time of disclosure otherwise than by a breach of this contract; or
- it is independently developed without access to the other party's Confidential Information.

- 27.29 The *Contractor* may only disclose the *Employer's* Confidential Information to the Contractor Personnel who are directly involved in the provision of the service and who need to know the information, and shall ensure that such Contractor Personnel are aware of and shall comply with these obligations as to confidentiality.

The *Contractor* shall not, and shall procure that the Contractor Personnel do not, use any of the *Employer*

Confidential Information received otherwise than for the purposes of this contract.

- 27.30 The *Contractor* may only disclose the *Employer* Confidential Information to the Contractor Personnel who need to know the information, and shall ensure that such Contractor Personnel are aware of, acknowledge the importance of, and comply with these obligations as to confidentiality. In the event that any default, act or omission of any Contractor Personnel causes or contributes (or could cause or contribute) to the *Contractor* breaching its obligations as to confidentiality under or in connection with this contract, the *Contractor* shall take such action as may be appropriate in the circumstances, including the use of disciplinary procedures in serious cases. To the fullest extent permitted by its own obligations of confidentiality to any Contractor Personnel, the *Contractor* shall provide such evidence to the *Employer* as the *Employer* may reasonably require (though not so as to risk compromising or prejudicing the case) to demonstrate that the *Contractor* is taking appropriate steps to comply with this clause, including copies of any written communications to and/or from Contractor Personnel, and any minutes of meetings and any other records which provide an audit trail of any discussions or exchanges with Contractor Personnel in connection with obligations as to confidentiality.
- 27.31 At the written request of the *Employer*, the *Contractor* shall procure that those members of the Contractor Personnel identified in the *Employer's* notice signs a confidentiality undertaking prior to commencing any work in accordance with this contract.
- 27.32 Nothing in this contract shall prevent the *Employer* from disclosing the *Contractor's* Confidential Information:
- to any Crown Body or any other Contracting Bodies. All Crown Bodies or Contracting Bodies receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Bodies on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Body; or any consultant, contractor or other person engaged by the *Employer* or any person conducting an Office of Government Commerce gateway review;
 - for the purpose of the examination and certification of the *Employer's* accounts; or

- for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the *Employer* has used its resources.

and for the purposes of the foregoing, disclosure of the Contractor's Confidential Information shall be on a confidential basis and subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the *Employer* under this clause 27.32.

27.33 The *Employer* shall use all reasonable endeavours to ensure that any government department, Contracting Body, employee, third party or Subcontractor to whom the *Contractor's* Confidential Information is disclosed pursuant to the above clause is made aware of the *Employer's* obligations of confidentiality.

27.34 Nothing in this clause shall prevent either party from using any techniques, ideas or know-how gained during the performance of the contract in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of IPR

Option Z 14

Security Requirements

Additional
NEC3 TSC
clause 27

27.36 The *Contractor* complies with, and procures the compliance of the Contractor Personnel, with:

- the Security Policy and the Security Management Plan and the *Contractor* shall ensure that the Security Management Plan produced by the *Contractor* fully complies with the Security Policy;
- Contract Schedule J (Security Provisions);

and;

The Contractor shall be obliged to inform the Client of any security incident, regardless of its size or perceived impact on the Client's business, as soon as the Contractor becomes aware of such an incident, and shall maintain auditable records of such events

Option Z 15

Malicious Software

Additional
NEC3 TSC
clause 27

27.37 The *Contractor* shall, as an enduring obligation throughout the *service period*, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor to check for, contain the spread of, and minimise the impact of Malicious Software in the ICT Environment (or as otherwise agreed by the parties).

- 27.38 Notwithstanding the above clause, if Malicious Software is found, the parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of *Employer Data*, assist each other to mitigate any losses and to restore the service to their desired operating efficiency.
- 27.39 Any cost arising out of the actions of the parties taken in compliance with the provisions of the above clause shall be borne by the parties as follows:
- by the *Contractor* where the Malicious Software originates from the *Contractor* Software, the Third Party Software supplied by the *Contractor* (except where the *Employer* has waived the obligation) or the *Employer Data* (whilst the *Employer Data* was under the control of the *Contractor*) unless the *Contractor* can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the *Employer* when provided to the *Contractor*; and
 - by the *Employer* if the Malicious Software originates from the *Employer* Software (in respect of which the *Employer* has waived its obligation) or the *Employer Data* (whilst the *Employer Data* was under the control of the *Employer*).

Option Z 16

Supplement to
NEC3 TSC clause
20

Tax Compliance

Insert new clauses:

- 20.9 The *Contractor* represents and warrants that as at the Contract Date, it has notified the *Employer* in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasions of Tax Non-Compliance.
- 20.10 If, at any point during the *service period*, an Occasion of Tax Non-Compliance occurs, the *Contractor* shall:
- notify the *Employer* in writing of such fact within 5 days of its occurrence; and
 - promptly provide to the *Employer*:
 - details of the steps which the *Contractor* is taking to address the Occasions of Tax Non-Compliance and to prevent the same from

recurring, together with any mitigating factors that it considers relevant; and

- such other information in relation to the Occasion of Tax Non-Compliance as the *Employer* may reasonably require.

Option Z 17

Supplement to
NEC3 TSC clause
20

Change of Control

Insert a new clause:

- 20.11 The *Contractor* promptly notifies the *Service Manager* in writing on each occasion of the occurrence of any change of control as defined by section 416 of the Income and Corporation taxes Act 1988 (any such case being a “Change of Control”). The *Employer* is permitted to exercise its rights pursuant to this clause for only six months after service of each and any notice by the *Contractor* pursuant to this clause and is not permitted to exercise such rights where the *Employer* has agreed in advance in writing to the particular Change of Control provided such Change of Control takes place as agreed.

Option Z 18

Supplement to
NEC3 TSC clause
20

Conflicts of interest

Insert a new clause:

- 20.12 The *Contractor* shall take appropriate steps to ensure that, to the best of its knowledge, neither the *Contractor* nor any contractor personnel is placed in a position where there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the *Contractor* or any member of the contractor personnel and the duties owed to the *Employer* under the provisions of the Contract.
- 20.12 A The *Contractor* discloses to the *Service Manager* any actual or potential conflict of interest arising from the *Contractor's* provision of the *service* as soon as practicable after becoming aware of such actual or potential conflict.
- 20.13 The *Contractor* immediately notifies the *Service Manager* of any circumstances giving rise to or potentially giving rise to conflicts of interest relating to the *Contractor* and/or the *Employer* (including without limitation its reputation and standing) of which it is aware or anticipates may justify the *Employer* taking action to protect its interests.

Option Z 19

Supplement to
NEC3 TSC clause
30

Extension to service period

Insert a new clause:

- 30.2 The *Service Manager* may instruct the *Contractor* to extend the *service period* up to a maximum of five (5) years, inclusive of the initial term. The *Service Manager* instructs the

Contractor no later than the period stated in the Contract Data.
The instruction is a compensation event.

Option Z 20

Supplement to
NEC3 TSC clause
50.2

Assessing the amount due

Delete clause 50.2 and replace with:

50.2 The amount due is

- the Price for Services Provided to Date,
- less any amounts to be paid by or retained from the *Contractor*.

Any tax which the law requires the *Employer* to pay to the *Contractor* is included in the amount due.

Option Z 21

Supplement to
NEC3 TSC clause
51.1

Payment

Delete clause 51.1 and replace with:

51.1 The *Service Manager* certifies a payment within one week of each assessment date. A payment is made by the *Contractor* to the *Employer* if the amount due is an amount due to the *Employer*. Other payments are made by the *Employer* to the *Contractor*. Payments are in the currency of this contract unless otherwise stated in this contract.

Option Z 22

Supplement to
NEC3 TSC clause
50

Fair payment

Insert a new clause:

55.1 The *Contractor* assesses the amount due to a Subcontractor without taking into account the amount certified by the *Service Manager*.

55.2 The *Contractor* includes in the contract with each Subcontractor

- a period for payment of the amount due to the Subcontractor not greater than 5 days after the final date for payment in this contract. The amount due includes, but is not limited to, payment for work which the Subcontractor has completed from the previous assessment date up to the current assessment date in this contract,
- a provision requiring the Subcontractor to include in each sub subcontract the same requirement, except that the period for payment is to be not greater than 9 days after the final date for payment in this contract and
- a provision requiring the Subcontractor to assess the amount due to a sub subcontractor without taking into account the amount paid by the *Contractor*.

Option Z 23

Contractual right of set off

Insert a new clause:

56.1 The *Employer* may set off any liability of the *Contractor* to:

- the *Employer*;
- any Contracting Body; or
- any Crown Body

against any liability of the *Employer*, any Contracting Body or any Crown Body, whether such liability is present or future, liquidated or unliquidated and whether or not such liability arises under this contract.

Option Z 24

Compensation events

Insert new sub-clauses to clause 60.1 (compensation events):

60.1 (15) Any change to the minimum hourly rate of pay set by Government which applies to workers.

(16) Any change to the rate of employer's National Insurance contribution.

(17) Any introduction of a compulsory Living Wage or London Living Wage or any change thereto which applies to workers.

Option Z 25

Assessing Compensation events

Delete clause 63.1 and replace with:

63.1 In this clause 63.1 the "Threshold" means 40% of the quantity of work shown in the Price List current at the Contract Date.

For a compensation event which:

- only affects the quantities of work shown in the Price List, the change to the Prices is assessed by multiplying the changed quantities of work with the appropriate rates in the Price List;
- extends the *service period*, the change to the Prices is assessed in accordance with Contract Schedule O;
- has the effect, either individually or cumulatively together with other compensation events, of omitting a quantity of work:
 - less than or equal to the Threshold, the change to the Prices is assessed by multiplying the changed quantities of work with the appropriate rates in the Price List;
 - more than the Threshold, the change to the Prices is assessed as follows:

- for the quantity of work up to and including the Threshold the change to the Prices is assessed by multiplying the changed quantities of work with the appropriate rates in the Price List;
- for the quantity of work in excess of the Threshold the change to the Prices is assessed by multiplying the changed quantities of work with the appropriate rates in the Price List less the Fee (the Fee is calculated on the quantity of work in excess of the Threshold).

Insert a new clause 63.14:

- 63.14 A compensation event which could cause people who are employed by the Contractor to be redundant is assessed as if the *Contractor* takes reasonable steps to mitigate the effects of the compensation event by:
- redeploying such people where it is practicable for the *Contractor* to do so; or
 - where redeployment is not practicable, taking such reasonable mitigation steps to minimise the costs of redundancy where practicable.

Option Z 26

Staff Transfer

Delete clause 82.1 and replace with:

Supplement to NEC3
TSC clause 82.1

- 82.1 Each Party indemnifies the other:
- against claims, proceedings, compensation and costs due to an event which is at his risk; and
 - in accordance with the indemnities that apply to this contract in Contract Schedule I

Option Z 27

Supplement to NEC3
TSC clause 83

Insurance cover

Insert a new clause:

- 83.3 All insurances required to be effected and maintained under this contract are placed with reputable insurers, to whom the other party has no reasonable objection, lawfully carrying on such insurance business in the United Kingdom, and upon customary and usual terms prevailing for the time being in the insurance market. The said terms and conditions do not include any term or condition to the effect that any insured must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 1930 or the Third Parties (Rights Against

Insurers) Act (Northern Ireland) 1930 as amended by the Insolvency (Northern Ireland) Order 1989.

- 83.4 Nothing in this clause relieves the *Contractor* from any of its obligations and liabilities under this contract

Option Z 28

Supplement to NEC3 TSC
clause 83

Professional indemnity insurance

Insert a new clause:

- 83.5 If required to obtain professional indemnity insurance, the *Contractor* obtains and maintains the professional indemnity insurance upon customary and usual terms and conditions prevailing for the time being in the insurance market, and with reputable insurers lawfully carrying on such insurance business in the United Kingdom on the basis and in an amount not less than that stated in the Contract Data, provided always that such insurance is available at commercially reasonable rates. The said terms and conditions do not include any term or condition to the effect that the *Contractor* must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 1930 or the Third Parties (Rights Against Insurers) Act (Northern Ireland) 1930 as amended by the Insolvency (Northern Ireland) Order 1989.
- 83.6 The *Contractor* does not without the prior written approval of the *Service Manager* settle or compromise with the insurers any claim which the *Contractor* may have against the insurers and which relates to a claim by the *Employer* against the *Contractor*, nor by any act or omission lose or prejudice the *Contractor's* right to make or proceed with such a claim against the insurers.
- 83.7 The *Contractor* immediately informs the *Service Manager* if the professional indemnity insurance ceases to be available at rates and on terms that the *Contractor* considers to be commercially reasonable. Any increased or additional premium required by insurers by reason of the *Contractor's* own claims record or other acts, omissions, matters or things particular to the *Contractor* is deemed to be within commercially reasonable rates.

- 83.8 The *Contractor* co-operates fully with any measures reasonably required by the *Service Manager* including (without limitation) completing any proposals for insurance and associated documents, maintaining such insurance at rates above commercially reasonable rates if the *Employer* undertakes in writing to reimburse the *Contractor* in respect of the net cost of such insurance to the *Contractor* above commercially reasonable rates or, if the *Employer* effects such insurance at rates at or above commercially reasonable rates, reimbursing the *Employer* in respect of what the net cost of such insurance to the *Employer* would have been at commercially reasonable rates.
- 83.9 The above obligation in respect of professional indemnity insurance continues notwithstanding termination of the *Contractor's* employment under this contract for any reason whatsoever, including (without limitation) breach by the *Employer*.

Option Z 29

Supplement to NEC3 TSC
clause 90.2

Termination Table

Delete the Termination Table and replace with:

TERMINATION TABLE			
Terminating Party	Reason	Procedure	Amount due
The <i>Employer</i>	A reason other than R1-R32	P1, P2 and P4	A1, A2 and A4
	R1-R15, R18 or R22-R32	P1, P2, P3 and P4	A1, A2 and A3
	R17 or R20	P1 and P4	A1 and A2
	R21	P1, P3 and P4	A1 and A2
The <i>Contractor</i>	R1-R10, R16 or R19	P1, P2 and P4	A1, A2 and A4
	R17 or R20	P1, P2 and P4	A1 and A2
	R23	P1, P2, P3 and P4	A1, A2 and A3

Option Z 30

Supplement to
NEC3 TSC
clause 91

Reasons for Termination

Insert new clauses:

91.8 The *Employer* may terminate if:

91.8.1 the *Contractor* breaches clause 19.2, 19.3 or 19.4 (R22); or

- 91.8.2 the Parties are unable to either remove a conflict of interest and/or to reduce its damaging effect to a reasonably acceptable level (R23); or
- 91.8.3 the warranty given by the *Contractor* in relation to Occasions of Tax Non-Compliance is materially untrue (R24); or
- 91.8.4 the *Contractor* commits a material breach of its obligation to notify the *Employer* of any Occasion of Tax Non-Compliance (R25); or
- 91.8.5 the *Contractor* fails to provide details of proposed mitigating factors in accordance with this contract in relation to any Occasion of Tax Non-Compliance which in the reasonable opinion of the *Employer*, are acceptable (R26).
- 91.8.6 the *Contractor*:
- is convicted or has been convicted of a criminal offence relating to the conduct of its business or profession (R27); or
 - commits or is found to have committed an act of grave misconduct in the course of its business or profession (R28); or
 - fails or has failed to comply with any obligations relating to the payment of any taxes or social security contributions (R29); or
 - has made any serious misrepresentations in the tendering process for any project or matter in which the public sector has or had a significant participation (R30); or
 - fails to obtain any necessary licences or to obtain or maintain membership of any relevant body (R31); or
 - demerges into two or more firms, merges with another firm, incorporates or otherwise changes its legal form or there is a change of control as defined by section 416 of the Income and Corporation taxes Act 1988 (any such case being a "Change of Control") and, in any such Change of Control, there are reasonable grounds for the *Employer* to withhold its consent relating to the financial standing of the new entity through which it is proposed that the service will be delivered or there are security concerns arising from the provision of the service by the new entity (R32).

Option Z 31

Option W3 Negotiation

Additional NEC3 TSC
option W3

- W3.1 Without prejudice to either Party's right to refer a dispute to the *Adjudicator* at any time, any dispute or difference between the Parties arising out of or relating to this contract is referred by either Party initially to representatives of the *Employer* and *Contractor* for negotiation and resolution.
- W3.2 If any dispute is not resolved within ten Working Days after it has been referred to the Parties' representatives (or such longer period as the Parties may agree), it is referred to an authorised senior officer of the *Employer* and an authorised senior officer of the *Contractor* for negotiation and resolution.
- W3.3 If any dispute cannot be resolved within ten Working Days after it has been referred to the authorised senior officers of the *Employer* and *Contractor* (or such longer period as the Parties may agree) either Party may decline to continue to participate in the negotiation.

Option Z 32

Additional NEC3 TSC
option W4

Option W4 Mediation

- W4.1 Without prejudice to either Party's right to refer a dispute to the *Adjudicator* at any time, any dispute or difference between the Parties arising out of or relating to this contract and which has not been resolved by negotiation is referred to mediation in accordance with the provisions of this clause.
- W4.2 The procedure and associated provisions for mediation pursuant to this clause are as follows:
- a neutral adviser or mediator ('the Mediator') is chosen by agreement between the *Employer* and the *Contractor* or, if they are unable to agree upon the identity of the Mediator within ten Working Days after a request by one Party to the other, or if the Mediator agreed upon is unable or unwilling to act, either Party may within ten Working Days from the date of the proposal to appoint a Mediator or within ten Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution ("CEDR") to appoint a Mediator; and
 - the Parties meet with the Mediator within ten Working Days of his appointment in order to agree the programme for exchange of all relevant information and the procedure under which negotiations will be held. The Parties may at any stage seek guidance from CEDR regarding a suitable procedure.

- W4.3 Unless otherwise agreed by the Parties, all negotiations connected with the dispute and any settlement agreement relating to it are confidential and without prejudice to the rights of the Parties in any future proceedings.
- W4.4 In the event that the Parties reach agreement on the resolution of the dispute, the agreement is reduced to writing and is binding on both Parties once it is signed by a duly authorised senior officer of the *Employer* and a duly authorised senior officer of the *Contractor*.
- W4.5 Failing agreement, the *Employer* or *Contractor* may agree to invite the Mediator to provide a non-binding but informative opinion in writing. No such invitation is made without the written consent of both Parties. If it is agreed that such an invitation is to be made, the opinion is provided on a without prejudice basis and is not used in evidence in any proceedings relating to this contract without the written consent of both Parties.
- W4.6 The *Employer* and the *Contractor* each bears their own costs in relation to any reference made to the Mediator and the fees and all other costs of the Mediator are borne jointly in equal proportions by both Parties unless otherwise directed by the Mediator.
- W4.7 In the event that the *Employer* and the *Contractor* fail to reach agreement within forty Working Days after the Mediator's appointment, or such longer period as may be agreed, the dispute may be referred to the *tribunal*.

Option Z 33

Changes in the law

Supplement to
NEC3 TSC
Option X2

X2

Delete X2.1 and replace with:

X2.1

A change in the law in the country in which the Affected Property is located is a compensation event if:

- it occurs after the Contract Date;
- an experienced contractor would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable for him to have allowed for it; and
- it is not one of the other compensation events stated in this contract.

The *Service Manager* may notify the *Contractor* of a compensation event for a change in the law and instruct him to submit quotations. If the effect of a compensation event which is a change in the law is to reduce the total Defined Cost, the Prices are reduced.

Option Z 34

Call Off Guarantee

Supplement to
NEC3 TSC
Option X4

X4 Delete X4 and replace with:

X4.1 The *Contractor* gives to the *Employer* a guarantee by the Call Off Guarantor of the *Contractor's* performance in the form of the Call Off Guarantee. If the Call Off Guarantee was not given by the Contract Date, it is given to the *Employer* within four weeks of the Contract Date.

Option Z 35

Limitation of Liability

Supplement to
NEC3 TSC
Option X18

X18.1 Delete X18.1

Delete X18.4 and replace with:

X18.4 The Contractor's total liability to the Employer for all matters arising under or in connection with this contract is limited to the amount stated in the Contract Data and applies in contract, tort or delict and otherwise to the extent allowed under the law of the contract.

Option Z 36

Task Order

Supplement to
NEC3 TSC
Option X19

X19 Delete X19.2 and X19.3 and replace with:

X19.2 A Task Order includes

- a detailed description of the work in the Task,
- a priced list of items of work in the Task in which items taken from the procedure in Contract Schedule N are identified,
- the starting and completion dates for the Task,
- the amount of delay damages for the late completion of the Task and
- the total of the prices for the Task.

The Service Manager consults the Contractor about the contents of a Task Order before he issues it.

When a Task Order is issued the work involved is added to the Service Information.

An instruction to carry out a Task is not a compensation event.

X19.3 The delay damages in a Task Order, if any, are not more than the estimated cost to the *Employer* of late completion of the Task. If Task Completion is later than the Task Completion Date, the Contractor pays delay damages at the rate stated in the Task Order from the Task Completion Date until Completion.

The prices for items in the Task price list are assessed in accordance with Contract Schedule N

Option Z 37

Management and Performance Information

X20 Delete X20 and replace with:

X20.1 A Key Performance Indicator is an aspect of performance by the *Contractor* for which a target is stated in the Performance Adjustment Schedule. The Performance Adjustment Schedule is the *performance adjustment schedule* unless later changed in accordance with this contract.

X20.2 From the *starting date* until the end of the *service period*, the *Contractor* reports to the *Service Manager*:

- the management and performance information required by Contract Schedule K;
- his performance against each of the Key Performance Indicators.

Reports are provided at monthly intervals.

X20.3 If the *Contractor* does not achieve the target stated in the Performance Adjustment Schedule, he submits to the *Service Manager* his proposals for improving performance.

X20.4 The amount calculated in accordance with the Performance Adjustment Schedule is retained from the monthly payment in accordance with the calculation of the Price for Services Provided to Date. An amount is not retained to the extent that it is caused by:

- a compensation event; or
- any failure of the *Employer's* property which is outside the control of the *Contractor*.

X20.5 The *Employer* may delete a Key Performance Indicator and associated payment from the Performance Adjustment Schedule but may not add or increase a payment stated in the Performance Adjustment Schedule save in accordance with this clause X20.

X20.6 If the *Employer* deletes a Key Performance Indicator and associated payment from the Performance Adjustment Schedule the associated payment is reallocated evenly across the remaining Key Performance Indicators so that the Monthly Total Value at Risk remains the same.

SECTION 2: RECOMMENDED FOR APPROPRIATE CONTRACTS ONLY

Option Z 38 Environmental requirements

Insert new clauses:

- | | | |
|---------------------------------------|------|--|
| Supplement to
NEC3 TSC
clause 2 | 29.1 | The <i>Contractor</i> complies with all applicable environmental laws and regulations in force from time to time in relation to the <i>service</i> and promptly provides evidence of compliance when reasonably requested by the <i>Service Manager</i> . |
| | 29.2 | The <i>Contractor</i> satisfies all reasonable requests by the <i>Service Manager</i> for information regarding the environmental impact of the <i>service</i> . |
| | 29.3 | The <i>Contractor</i> shall, when working on the Employers Premises, perform its obligations under the Contract in accordance with the <i>Employer's</i> environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment. |

Option Z 42 The Housing Grants, Construction and Regeneration Act 1996

- | | | |
|--|------|---|
| Supplement to
NEC3 TSC
option Y(UK)2 | Y2.5 | If Option Y(UK)2 is said to apply then notwithstanding that this contract relates to the carrying out of construction operations other than in England or Wales or Scotland, the Act is deemed to apply to this contract. |
|--|------|---|

Option Z 44

Intellectual Property Rights

Insert new clauses:

Supplement
to NEC3 TSC
clause 2

- 29.10 In this clause 29.10 – 29.18 only:
- “Intellectual Property Rights”** means any and all patents, trademarks, service marks, copyright, moral rights, rights in a design, know-how, Confidential Information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating or attached thereto;
- “Confidential Information”** means any information designated as such by the Party disclosing that information; and
- “Document”** means all designs, drawings, specifications, software, electronic data, photographs, plans, surveys, reports, and all other documents and/or information prepared by or on behalf of the *Contractor* in relation to this contract.
- 29.11 The Intellectual Property Rights in all Documents prepared by or on behalf of the *Contractor* in relation to this contract and the work executed from them remains the property of the *Contractor*. The *Contractor* hereby grants to the *Employer* and to the Authority an irrevocable, royalty free, non-exclusive licence to use and reproduce the Documents for any and all purposes connected with the Affected Property. Such licence entitles the *Employer* and the Authority to grant sub-licences to third parties in the same terms as this licence provided always that the *Contractor* shall not be liable to any licensee for any use of the Documents or the Intellectual Property Rights in the Documents for purposes other than those for which the same were originally prepared by or on behalf of the *Contractor*.

- 29.12 In the event that the *Contractor* does not own the copyright or any Intellectual Property Rights in any Document the *Contractor* uses all reasonable endeavours to procure the right to grant such rights to the *Employer* to use any such copyright or Intellectual Property Rights from any third party owner of the copyright or Intellectual Property Rights. In the event that the *Contractor* is unable to procure the right to grant to the *Employer* in accordance with the foregoing the *Contractor* procures that the third party grants a direct licence to the *Employer* on industry acceptable terms.
- 29.13 The *Contractor* waives any moral right to be identified as author of the Documents in accordance with section 77, Copyright Designs and Patents Acts 1988 and any right not to have the Documents subjected to derogatory treatment in accordance with section 8 of that Act as against the *Employer* or any licensee or assignee of the *Employer*.
- 29.14 In the event that any act unauthorised by the *Employer* infringes a moral right of the *Contractor* in relation to the Documents the *Contractor* undertakes, if the *Employer* so requests and at the *Employer's* expense, to institute proceedings for infringement of the moral rights.
- 29.15 The *Contractor* warrants to the *Employer* that he has not granted and shall not (unless authorised by the *Employer*) grant any rights to any third party to use or otherwise exploit the Documents.
- 29.16 The *Contractor* supplies copies of the Documents to the *Service Manager* and to the *Employer's* other contractors and consultants for no additional fee to the extent necessary to enable them to discharge their respective functions in relation to this contract or related works.
- 29.17 After the termination or conclusion of the *Contractor's* employment hereunder, the *Contractor* supplies the *Service Manager* with copies and/or computer discs of such of the Documents as the *Service Manager* may from time to time request and the *Employer* pays the *Contractor's* reasonable costs for producing such copies or discs.
- 29.18 In Providing the Service the *Contractor* does not infringe any Intellectual Property Rights of any third party. The *Contractor* indemnifies the *Employer* against claims, proceedings, compensation and costs arising from an infringement or alleged infringement of the Intellectual Property Rights of any third party.

Option Z 47

Small and Medium Sized Enterprises (SMEs)

Insert new clauses:

Supplement
to NEC3
TSC clause
2

- 29.40 The *Contractor* is required to take all reasonable steps to engage SMEs as Subcontractors and to seek to ensure that no less than the percentage of the Subcontractors stated in the Contract Data (the “SME Percentage”) are SMEs or that a similar proportion of the Defined Cost of the *service* is undertaken by SMEs.
- 29.41 The *Contractor* is required to report to the *Employer* in its regular contract management monthly reporting cycle the numbers of SMEs engaged as Subcontractors and the value of the Defined Cost of the *service* that has been undertaken by SMEs.
- 29.42 Where available, the *Contractor* is required to tender its Subcontracts using the same online electronic portal as was provided by the *Employer* for the purposes of tendering this contract.
- 29.43 The *Contractor* is to ensure that the terms and conditions used to engage Subcontractors are no less favourable than those of this contract. A reason for the *Service Manager* not accepting subcontract conditions proposed by the *Contractor* is that they are unduly disadvantageous to the Subcontractor.

Option Z 48

Apprenticeships

Insert new clauses:

Supplement
to NEC3

- 29.44 The *Contractor* is required to take all reasonable steps to employ apprentices, and report to the *Employer* the numbers of

apprentices employed and the wider skills training provided, during the delivery of the *service*.

- 29.45 The *Contractor* is required to make available to its employees and Subcontractors working on the contract, information about the Government's Apprenticeship programme and wider skills opportunities.
- 29.46 The *Contractor* is to provide any further skills training opportunities that are appropriate for its employees engaged in Providing the Service.
- 29.47 The *Contractor* is to provide a written report detailing the following measures in its regular contract management monthly reporting cycle and be prepared to discuss apprenticeships at its regular meetings with the *Service Manager*:
- the number of people during the reporting period employed on the contract, including support staff and Subcontractors;
 - the number of apprentices and number of new starts on apprenticeships directly initiated through the procurement process;
 - the percentage of all employees taking part in an apprenticeship programme;
 - if applicable, an explanation from the *Contractor* as to why it is not managing to meet the specified percentage target;
 - actions being taken to improve the take up of apprenticeships;
 - other training/skills development being undertaken by employees in relation to this contract, including:
 - (a) work experience placements for 14 to 16 year olds;
 - (b) work experience /work trial placements for other ages;
 - (c) student sandwich/gap year placements;
 - (d) graduate placements;
 - (e) vocational training;
 - (f) basic skills training; and
 - (g) on site training provision/ facilities.

Option Z 49

Information Sharing

Insert new clause:

27.35

The *Employer* may disclose the Confidential Information of the *Contractor*:

- on a confidential basis to any Crown Body for any proper purpose of the *Employer* or the relevant Crown Body;
- to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- to the extent that the *Employer* (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any Crown Body (including any benchmarking organisation) for any purpose connected with this contract;
- on a confidential basis for the purpose of the exercise of its rights under this contract;
- on a confidential basis to a proposed successor body of the *Employer* in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this contract,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the *Employer* under this Z clause.

Option Z 50

Compensation Events (Pensions)

60.1

Insert new sub-clauses to clause 60.1 (compensation events):

(20) A change to the pension employer contribution rate for Transferring Former Contractor Employees or Transferring Employer Employees.

(21) A change to the pension auto-enrolment costs for Transferring Former Contractor Employees or Transferring Employer Employees.

SECTION 3: FURTHER Z CLAUSES REQUIRED BY THE EMPLOYER

Option Z 60

Discrimination

Insert new clauses:

Supplement
to NEC3
TSC clause
27

27.15B The *Contractor* shall not unlawfully discriminate either directly or indirectly because of race, colour, ethnic or national origin, disability, sex, sexual orientation, gender reassignment, religion or belief, or age and without prejudice to the generality of the foregoing the *Contractor* shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 (which replaces the following: Sex Discrimination Act 1975, the Race Relations Act 1976, the Equal Pay Act 1970, the Disability Discrimination Act 1995, the Employment Equality (Sexual Orientation) Regulations 2007, the Employment Equality (Religion or Belief) Regulations 2003, the Employment Equality (Age) Regulations 2006, the Equality Act 2006), the Human Rights Act 1998 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.

27.15C The *Contractor* shall take all reasonable steps to secure the observance of Clause 27.15B.1 by all Staff.

Option Z 61

Compliance with Value Added Tax and Other Tax Requirements

Insert new clauses:

Supplement
to NEC3
TSC clause
20

20.10A (a) The *Contractor* shall at all times comply with the Value Added Tax Act 1994 and all other statutes relating to direct or indirect taxes.

(b) Failure to comply may constitute a material breach of this Contract and the *Employer* may exercise the rights and provisions of termination in accordance with 90.2.

(c) The *Contractor* shall provide to the *Employer* the name and, as applicable, the Value Added Tax registration number, PAYE

collection number and either the Corporation Tax or Self-Assessment reference of any agent, supplier or sub-contractor of the *Contractor* prior to the commencement of any work under this Contract by that agent, supplier or sub-contractor. Upon a request by the *Employer*, the *Contractor* shall not employ or will cease to employ any agent, supplier or sub-contractor.

Arrears of Value Added Tax

20.10B (a) Where an amount, including any assessed amount, is due from the *Contractor* as Value Added Tax under the Value Added Tax Act 1994 (as amended) an equivalent amount may be deducted by the *Employer* from the amount of any sum due to the *Contractor* under the Contract.

(b) The *Employer* shall give the *Contractor* at least 14 days notice in writing before exercising the right of deduction under Clause 20.10b(a) The notice shall specify the amount to be deducted and shall contain a description of the VAT due from the *Contractor* in respect of which the deduction is made.

Health and Safety

Option Z62

Insert new clauses:

Supplement
to NEC3
TSC clause
2

29.48 The *Contractor* shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the performance of its obligations under the Contract.

29.49 The *Contractor* shall promptly notify the *Employer* of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract. The *Employer* shall promptly notify the *Contractor* of any health and safety hazards which may exist or arise at the Premises and which may affect the *Contractor* in the performance of its obligations under the Contract.

29.50 While on the Premises, the *Contractor* shall comply with any health and safety measures implemented by the *Employer* in respect of Staff and other persons working there.

29.51 The *Contractor* shall notify the *Employer* immediately in the event of any incident occurring in the performance of its obligations under the Contract on the Premises where that incident causes any personal injury or damage to Property which could give rise to personal injury.

**Option
Z63**

Supplement
to NEC3
TSC clause
2

PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES

Insert new clauses:

- 29.52 The *Contractor* shall not:
- I. make any press announcements or publicise this Contract or its contents in any way; or
 - II. use the *Employer's* name or brand in any promotion or marketing or announcement of orders;
- without the prior written consent of the *Employer*, which shall not be unreasonably withheld or delayed.
- 29.53 Each Party acknowledges to the other that nothing in this Contract either expressly or by implication constitutes an endorsement of any products or services of the other Party and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.
- 29.54 Both Parties shall take all reasonable steps to ensure that their servants, employees, agents, sub-contractors, suppliers, professional advisors and consultants comply with this Clause 29.52 and 29.53.

**Option
Z64**

Supplement
to NEC3
TSC clause
2

Employer's Right to Publish the Contract

Insert new clauses:

- 29.55 The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. The *Employer* shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA. Notwithstanding any other term of this Contract, the *Contractor* hereby gives his consent for the *Employer* to publish the Contract in its entirety, (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted) including from time to time agreed changes to the Contract, to the general public.
- 29.56 The *Employer* may consult with the *Contractor* to inform its decision regarding any redactions but the *Employer* shall have the final decision at its absolute discretion.
- 29.57 The *Contractor* shall assist and cooperate with the *Employer* to enable the *Employer* to publish this Contract

Warranties and Representations

**Option
Z65**

Supplement
to NEC3
TSC clause
2

29.58

Insert new clauses:

The *Contractor* warrants and represents that:

- (a) it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Contract and that the Contract is executed by a duly authorised representative of the *Contractor*;
- (b) in entering the Contract it has not committed any Fraud;
- (c) as at the Commencement Date, all Information contained in the Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the *Employer* prior to execution of the Contract;
- (d) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of the *Contractor's* knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Contract;
- (e) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
- (f) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the *Contractor* or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the *Contractor's* assets or revenue;
- (g) it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- (h) in the 3 years prior to the date of the Contract:
 - (i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
 - (ii) it has been in full compliance with all applicable securities and tax Laws and regulations in the jurisdiction in which it is established; and
 - (iii) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial

condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract.

3. **CONTRACT SCHEDULE C - CONTRACT DATA PART TWO – DATA PROVIDED BY THE CONTRACTOR**

Interserve ITT Response:

The *Contractor* is defined in the form of agreement to which this Contract Schedule is annexed

The *direct fee percentage* is 5.82%

The *subcontracted fee percentage* is 5.82%

The key persons are - **as noted in the submitted Organisational Charts at Contract Schedule C:**

The following matters will be included in the Risk Register:

The Risk register will be developed during Mobilisation

For Option A:

- The *price list* is in Contract Schedule E.

For Option A:

- The tendered total of the Prices is [REDACTED]

Note that the 'tendered total of the Prices' is the total amount over the entire duration of the service period and is also the 'Lump Sum Price' defined in the Framework Agreement.

CONTRACT SCHEDULE D
THE SERVICE INFORMATION

4. CONTRACT SCHEDULE D - THE SERVICE INFORMATION

The service information is provided as an embedded file and includes:

*Annex A – Specification – **Revised Specification agreed during contract discussions pre signature and replaces original specification as issued in the ITT***

Annex B – Standards

Annex C – Contract Management

Annex D – Process Maps

Annex E – Payment mechanism

Annex F – HMRC and HM GOV. Policies

CONTRACT SCHEDULE E

5. **CONTRACT SCHEDULE E - THE PRICE LIST**

COST MODEL Submitted in ITT response:

An additional Price Summary was submitted for cost clarity purposes post contract award and pre contract signature. Original Cost model remains as submitted in tender response

Documents:

1. Contract Schedule E – Interserve Cost Model V1.0 AGREED
2. Contract Schedule E – HMRC – Interserve Additional Price Summary AGREED

To Note: The prices submitted in the tender and inserted here will be the maximum prices applied during the contract term.

CONTRACT SCHEDULE F

COLLATERAL WARRANTY AGREEMENTS – Not required

CONTRACT SCHEDULE G
PERFORMANCE BOND – Not Required

CONTRACT SCHEDULE H
ARBITRATION PROCEDURE

6. CONTRACT SCHEDULE H - ARBITRATION PROCEDURE

- 6.1 Instead of referring a dispute to litigation the Parties may, if they both agree, refer any dispute to arbitration in accordance with this procedure.
- 6.2 The party seeking to initiate the arbitration shall give a written Notice of Arbitration to the other party. The Notice of Arbitration shall:
 - 6.2.1 state that the dispute is referred to arbitration;
 - 6.2.2 state the particulars of this contract; and
 - 6.2.3 provide a brief summary of the subject of the dispute.
- 6.3 Unless otherwise agreed in writing by the *Employer* and the *Contractor*, the provisions of the Arbitration Act 1996 shall govern the arbitration commenced pursuant to this paragraph 3.
- 6.4 Any Dispute, if referred to arbitration in accordance with this procedure, shall be resolved by arbitration under the procedural rules of the London Court of International Arbitration.
- 6.5 It is agreed between the *Employer* and the *Contractor* that for the purposes of the arbitration, the arbitrator shall have the power to make provisional awards as provided for in Section 39 of the Arbitration Act 1996.
- 6.6 For the avoidance of doubt it is agreed by the *Employer* and the *Contractor* that the arbitration process and anything said, done or produced in or in relation to the arbitration process (including any awards) shall be confidential between the Parties, except as may be lawfully required in judicial proceedings relating to the arbitration or otherwise. No report relating to anything said, done or produced in or in relation to the arbitration process may be made to anybody other than the *tribunal*, the *Employer* and the *Contractor*, their legal representatives and any person necessary to the conduct of the proceedings, without the agreement of the Parties.
- 6.7 The arbitration proceedings shall take place in the location stated in the Contract Data and shall be in the English language and the arbitration proceedings shall be governed by, and interpretations made in accordance with, the *law of the contract*.
- 6.8 The *Employer* and the *Contractor* shall each bear their own costs in relation to any reference made to the arbitrator and the fees and all other costs of the arbitrator shall be borne jointly in equal proportions by both Parties unless otherwise directed by the arbitrator.
- 6.9 This procedure shall be without prejudice to either party's right to refer any dispute to adjudication in accordance with this contract.

CONTRACT SCHEDULE I
STAFF TRANSFER

7. CONTRACT SCHEDULE I - STAFF TRANSFER

7.1 Definitions

7.1.1 In this Contract Schedule, the following definitions shall apply:

"Contractor's Final Personnel List"	means a list provided by the <i>Contractor</i> of all staff who will transfer under the Employment Regulations on the Relevant Transfer Date;
"Contractor's Provisional Personnel List"	means a list prepared and updated by the <i>Contractor</i> of all staff who are engaged in or wholly or mainly assigned to the provision of the <i>service</i> or any relevant part of the <i>service</i> which it is envisaged as at the date of such list will no longer be provided by the <i>Contractor</i>
"Eligible Redundant Employee"	means an Undisclosed Employee (as defined in paragraph 2 of Part C of this Contract Schedule I – Staff Transfer) who is compulsorily dismissed by the <i>Contractor</i> by reason of redundancy (as such term is defined in section 139 of the Employment Rights Act 1996) as a result of an economic technical organisational reason entailing changes to the workforce and the <i>Contractor</i> has followed a fair dismissal procedure and complied with all contractual and legislative requirements;
"Employee Liabilities"	<p>means all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation including in relation to the following:</p> <ul style="list-style-type: none">a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;b) unfair, wrongful or constructive dismissal compensation;c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;

	<ul style="list-style-type: none"> d) compensation for less favourable treatment of part-time workers or fixed term employees; e) outstanding debts and unlawful deduction of wages including any PAYE and National Insurance Contributions in relation to payments made by the <i>Employer</i> or the Replacement Contractor to a Transferring Contractor Employee which would have been payable by the <i>Contractor</i> or the Sub-Contractor if such payment should have been made prior to the Service Transfer Date; f) claims whether in tort, contract or statute or otherwise; g) any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;
"New Fair Deal"	the revised Fair Deal position set out in the HM Treasury guidance: "Fair Deal for staff pensions: staff transfer from central government" issued in October 2013;
"Notified Sub-Contractor"	means a Sub-Contractor identified in Annex 2 of this Contract Schedule I to whom Transferring Employer's Employees and/or Transferring Former Contractor Employees will transfer on a Relevant Transfer Date;
"Principles of Good Employment Practice"	means the guidance published by the Cabinet Office and found at www.gov.uk/government/publications/principles-of-good-employment-practice ;
"Redundancy Costs"	means, in respect of each Eligible Redundant Employee, statutory redundancy pay entitlement (calculated in accordance with Part XI of the Employment Rights Act 1996) and contractual redundancy pay entitlement (which transferred to the <i>Contractor</i> under the TUPE Regulations) to the extent it exceeds the statutory redundancy pay entitlement, and contractual payment in lieu of notice entitlement (which transferred to the <i>Contractor</i> under the Employment Regulations) where it is not reasonably practicable for that employee to continue in employment during their period of notice;
"Replacement Contractor"	means any third party provider of Replacement Services appointed by or at the direction of the <i>Employer</i> from time to time or where the <i>Employer</i> is providing Replacement Services for its own account, shall also include the <i>Employer</i>

"Replacement Services"	means any services which are substantially similar to any of the <i>service</i> and which the <i>Employer</i> receives in substitution for any of the <i>service</i> following the end of the <i>service period</i> or earlier termination, whether those services are provided by the <i>Employer</i> internally and/or by any third party;
"Replacement Sub-Contractor"	means a subcontractor of the Replacement Contractor to whom Transferring Contractor Employees will transfer on a Service Transfer Date (or any sub-contractor of any such sub-contractor);
"Service Transfer"	any transfer of the <i>service</i> (or any part of the <i>service</i>), for whatever reason, from the <i>Contractor</i> or any subcontractor to a Replacement Contractor or a Replacement Sub-Contractor
"Service Transfer Date"	means the date of a Service Transfer;
"Staffing Information"	<p>means, in relation to all persons identified on the Contractor's Provisional Personnel List or Contractor's Final Personnel List, as the case may be, such information as the <i>Employer</i> may reasonably request (subject to all applicable provisions of the Data Protection Legislation), but including in an anonymised format:</p> <ul style="list-style-type: none"> their ages, dates of commencement of employment or engagement and gender; details of whether they are employed, self employed contractors or consultants, agency workers or otherwise; details of contracted working hours; the identity of the employer or relevant contracting party; their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments; their wages, salaries and profit sharing arrangements as applicable; details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them; any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);

details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;

copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and

any other “employee liability information” as such term is defined in regulation 11 of the Employment Regulations;

“Transferring Contractor Employees”

means those employees of the *Contractor* and/or the Sub-Contractors to whom the Employment Regulations will apply on the Service Transfer Date

"Transferring Employer Employees"

means those employees of the *Employer* to whom the Employment Regulations will apply on the Relevant Transfer Date;

Interpretation

Where a provision in this Schedule imposes an obligation on the *Contractor* to provide an indemnity, undertaking or warranty, the *Contractor* shall procure that each of its Sub-Contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the *Employer*, Former Contractor, Replacement Contractor or Replacement Sub-Contractor, as the case may be.

PART A: NOT USED

PART B: NOT USED

7.2 PART C: No transfer of employees at commencement of the provision of Services

7.2.1 The *Employer* and the *Contractor* agree that the commencement of the provision of the *service* or of any part of the *service* will not be a Relevant Transfer in relation to any employees of the *Employer* and/or any Former Contractor.

7.2.2. If it is determined in relation to any employee of the *Employer* and/or a Former Contractor, that his/her contract of employment has been transferred from the *Employer* and/or the Former Contractor to the *Contractor* and/or any Sub-Contractor pursuant to the Employment Regulations as a result of the commencement of the provision of the *service* ("**Undisclosed Employee**") then the *Employer* shall indemnify the *Contractor* and any *Notified Sub-Contractor* against any losses, damages, compensation, awards, costs, liabilities and expenses ("**Loss**") arising out of or in connection with any claim against it by any Undisclosed Employee arising from any act or omission by the *Former Contractor* occurring on or before commencement of the provision of the *service* provided that the *Contractor* takes, or shall procure that the *Notified Sub-Contractor* takes, all reasonable steps to minimise any such Loss (as defined in this paragraph 2).

7.2.3. The *Employer* shall pay to the *Contractor* and any *Notified Sub-Contractor* any Redundancy Costs incurred by the *Contractor* and any *Notified Sub-Contractor* in relation to each Eligible Redundant Employee subject to the following provisions:

7.2.3.1 The obligation to pay any Redundancy Costs set out in paragraph 3 above shall not apply in relation to the Eligible Redundant Employee(s) made redundant:

7.2.3.1.1 where the relevant Eligible Redundant Employee is identified more than 30 calendar days after the commencement of the provision of the *service* or of any part of the *service*; or

7.2.3.1.2 to the extent that any Redundancy Costs are attributable to any increases made by the *Contractor* and any *Notified Sub-Contractor* to any Eligible Redundant Employee's contractual entitlements to redundancy or notice periods; or

7.2.3.1.3 in respect of any Eligible Redundant Employee who objected to transfer to the *Contractor* and any *Notified Sub-Contractor* pursuant to Regulation 4(7) of the Employment Regulations.

7.2.3.2 The *Contractor* and any *Notified Sub-Contractor* shall use reasonable endeavours to:

7.2.3.2.1 redeploy any prospective Eligible Redundant Employees within the *Contractor*, and

7.2.3.2.2 mitigate the Redundancy Costs.

7.2.3.3 The *Contractor* and any *Notified Sub-Contractor* shall provide:

- (a) such documents or information as the *Employer* may reasonably require to verify the Redundancy Costs claimed by the *Contractor* and any *Notified Sub-Contractor*, and
- (b) information and relevant supporting documents to explain the process followed by the *Contractor* and any *Notified Sub-Contractor* in compliance with its obligations under paragraph 3.2 above, in each case prior to any payment under paragraph 3 above.

7.2.3.4 If any Eligible Redundant Employee is made compulsorily redundant by the *Contractor* or any *Notified Sub-Contractor* but is subsequently re-employed by *Contractor* or any *Notified Sub-Contractor* (or any of their affiliates) within 1 year of the date such Eligible Redundant Employee's employment by the *Contractor* or any *Notified Sub-Contractor* terminates, the *Contractor* or any *Notified Sub-Contractor* shall repay the *Employer* any payment made by the *Employer* to the *Contractor* or any *Notified Sub-Contractor* pursuant to paragraph 3 above within 30 days of such re-employment commencing.

7.2.3.5 The *Employer's* aggregate liability for any Redundancy Costs payable in accordance with paragraph 3 above shall be limited to £100,000 (one hundred thousand pounds) and the *Employer* shall have no liability for any Redundancy Costs incurred by the *Contractor* or any *Notified Sub-Contractor* in relation to any Eligible Redundant Employee in excess of such amount.

PART D

EMPLOYMENT EXIT PROVISIONS

7.3 Pre-service Transfer Obligations

7.3.1 The *Contractor* agrees that within twenty (20) Working Days of the earliest of:

7.3.1.1 receipt of a notification from the *Employer* of a Service Transfer or intended Service Transfer;

7.3.1.2 receipt of the giving of notice of early termination or any partial termination of this contract;

7.3.1.3 the date which is twelve (12) months before the end of the service *period*; and

7.3.1.4 receipt of a written request of the *Employer* at any time (provided that the *Employer* shall only be entitled to make one such request in any six (6) month period),

it shall provide in a suitably anonymised format so as to comply with the Data Protection Legislation, the Contractor's Provisional Personnel List, together with the Staffing Information in relation to the Contractor's Provisional Personnel List and it shall provide an updated Contractor's Provisional Personnel List at such intervals as are reasonably requested by the *Employer*.

7.3.2 At least twenty (20) Working Days prior to the Service Transfer Date, the *Contractor* shall provide to the *Employer* or at the direction of the *Employer* to any Replacement Contractor and/or any Replacement Sub-Contractor:

7.3.2.1 the Contractor's Final Personnel List, which shall identify which of the Staff are Transferring Contractor Employees; and

7.3.2.2 the Staffing Information in relation to the Contractor's Final Personnel List (insofar as such information has not previously been provided).

7.3.3 The *Employer* shall be permitted to use and disclose information provided by the *Contractor* under paragraphs 7.3.1 and 7.3.2 of Part D of this Contract Schedule for the purpose of informing any prospective Replacement Contractor and/or Replacement Sub-Contractor.

7.3.4 The *Contractor* warrants, for the benefit of the *Employer*, any Replacement Contractor, and any Replacement Sub-Contractor that all information provided pursuant to paragraphs 7.3.1 and 7.3.2 of Part D of this Contract Schedule shall be true and accurate in all material respects.

7.3.5 From the date of the earliest event referred to in paragraphs 7.3.1.1 to 7.3.1.3 of Part D of this Contract Schedule, the *Contractor* agrees, that it shall not, and agrees to procure that each Sub-Contractor shall not, assign any person to the provision of the Services who is not listed on the

Contractor's Provisional Personnel List and shall not without the approval of the *Employer* (not to be unreasonably withheld or delayed):

- 7.3.5.1 replace or re-deploy any Staff listed on the Contractor's Provisional Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;
- 7.3.5.2 make, promise, propose or permit any material changes to the terms and conditions of employment of the Staff (including any payments connected with the termination of employment);
- 7.3.5.3 increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Staff save for fulfilling assignments and projects previously scheduled and agreed;
- 7.3.5.4 introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Contractor's Provisional Personnel List;
- 7.3.5.5 increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or
- 7.3.5.6 terminate or give notice to terminate the employment or contracts of any persons on the Contractor's Provisional Personnel List save by due disciplinary process,

and shall promptly notify, and procure that each Sub-Contractor shall promptly notify, the *Employer* or, at the direction of the *Employer*, any Replacement Contractor and any Replacement Sub-Contractor of any notice to terminate employment given by the *Contractor* or relevant Sub-Contractor or received from any persons listed on the Contractor's Provisional Personnel List regardless of when such notice takes effect.

- 7.3.6 During the *service period*, the *Contractor* shall provide to the *Employer* any information the *Employer* may reasonably require relating to any individual employed, assigned or engaged in providing the Services (subject to any limitations imposed by the Data Protection Legislation) including without limitation the Staffing Information and, upon reasonable request by the *Employer* and subject only to any limitation imposed by the Data Protection Legislation, the *Contractor* shall provide, and shall procure that each Sub-Contractor shall provide, the *Employer* or, at the direction of the *Employer* to a Replacement Contractor and/or any Replacement Sub-Contractor with access (on reasonable notice and during normal working hours) to such employment records as the *Employer* reasonably requests and shall allow the *Employer* or at the *Employer's* direction, the Replacement Contractor and/or any Replacement Sub-Contractor to have copies of any such documents.
- 7.3.7 The *Contractor* shall provide, and shall procure that each Sub-Contractor shall provide, all reasonable cooperation and assistance to the *Employer*,

any Replacement Contractor and/or any Replacement Sub-Contractor to ensure the smooth transfer of the Transferring Contractor Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Contractor Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within five (5) Working Days following the Service Transfer Date, the *Contractor* shall provide, and shall procure that each Sub-Contractor shall provide, the *Employer* or, at the direction of the *Employer*, to any Replacement Contractor and/or any Replacement Sub-Contractor (as appropriate), in respect of each person on the Contractor's Final Personnel List who is a Transferring Contractor Employee:

- 7.3.7.1 the most recent month's copy pay slip data;
- 7.3.7.2 details of cumulative pay for tax and pension purposes;
- 7.3.7.3 details of cumulative tax paid;
- 7.3.7.4 tax code;
- 7.3.7.5 details of any voluntary deductions from pay; and
- 7.3.7.6 bank/building society account details for payroll purposes.

7.4 Employment Regulations Exit Provisions

7.4.1 The *Employer* and the *Contractor* acknowledge that subsequent to the *starting date*, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or partial termination of this contract or otherwise) resulting in the Services being undertaken by a Replacement Contractor and/or a Replacement Sub-Contractor. Such change in the identity of the *Contractor* of such services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The *Employer* and the *Contractor* further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the *Contractor* and the Transferring Contractor Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Contractor and/or a Replacement Sub-Contractor (as the case may be) and each such Transferring Contractor Employee.

7.4.2 The *Contractor* shall, and shall procure that each Sub-Contractor shall, comply with all its obligations in respect of the Transferring Contractor Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of all the Transferring Contractor Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable

in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the *Contractor* and/or the Sub-Contractor (as appropriate); and (ii) the Replacement Contractor and/or Replacement Sub-Contractor.

7.4.3 Subject to paragraph 7.4.4 of Part D of this Contract Schedule, the *Contractor* shall indemnify the *Employer* and/or the Replacement Contractor and/or any Replacement Sub-Contractor against any Employee Liabilities in respect of any Transferring Contractor Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

7.4.3.1 any act or omission of the *Contractor* or any Sub-Contractor whether occurring before, on or after the Service Transfer Date;

7.4.3.2 the breach or non-observance by the *Contractor* or any Sub-Contractor occurring on or before the Service Transfer Date of:

(a) any collective agreement applicable to the Transferring Contractor Employees; and/or

(b) any other custom or practice with a trade union or staff association in respect of any Transferring Contractor Employees which the *Contractor* or any Sub-Contractor is contractually bound to honour;

7.4.3.3 any claim by any trade union or other body or person representing any Transferring Contractor Employees arising from or connected with any failure by the *Contractor* or a Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;

7.4.3.4 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

(a) in relation to any Transferring Contractor Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and

(b) in relation to any employee who is not a Transferring Contractor Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the *Contractor* to the *Employer* and/or Replacement Contractor and/or any Replacement Sub-Contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;

- 7.4.3.5 a failure of the *Contractor* or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Contractor Employees in respect of the period up to (and including) the Service Transfer Date);
 - 7.4.3.6 any claim made by or in respect of any person employed or formerly employed by the *Contractor* or any Sub-Contractor other than a Transferring Contractor Employee for whom it is alleged the *Employer* and/or the Replacement Contractor and/or any Replacement Sub-Contractor may be liable by virtue of this contract and/or the Employment Regulations and/or the Acquired Rights Directive; and
 - 7.4.3.7 any claim made by or in respect of a Transferring Contractor Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Contractor Employee relating to any act or omission of the *Contractor* or any Sub-Contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the *Employer* and/or Replacement Contractor to comply with regulation 13(4) of the Employment Regulations.
- 7.4.4 The indemnities in paragraph 7.4.37.4.3 of Part D of this Contract Schedule shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Contractor and/or any Replacement Sub-Contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:
- 7.4.4.1 arising out of the resignation of any Transferring Contractor Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Contractor and/or any Replacement Sub-Contractor to occur in the period on or after the Service Transfer Date); or
 - 7.4.4.2 arising from the Replacement Contractor's failure, and/or Replacement Sub-Contractor's failure, to comply with its obligations under the Employment Regulations.
- 7.4.5 If any person who is not a Transferring Contractor Employee claims, or it is determined in relation to any person who is not a Transferring Contractor Employee, that his/her contract of employment has been transferred from the *Contractor* or any Sub-Contractor to the Replacement Contractor and/or Replacement Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:
- 7.4.5.1 the *Employer* shall procure that the Replacement Contractor shall, or any Replacement Sub-Contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the *Contractor*; and
 - 7.4.5.2 the *Contractor* may offer (or may procure that a Sub-Contractor may offer) employment to such person within fifteen (15) Working

Days of the notification by the Replacement Contractor and/or any and/or Replacement Sub-Contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with the *law of the contract*.

7.4.6 If such offer is accepted, or if the situation has otherwise been resolved by the *Contractor* or a Sub-Contractor, the *Employer* shall procure that the Replacement Contractor shall, or procure that the Replacement Sub-Contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.

7.4.7 If after the fifteen (15) Working Day period specified in paragraph 7.4.5.2 of Part D of this Contract Schedule has elapsed:

7.4.7.1 no such offer of employment has been made;

7.4.7.2 such offer has been made but not accepted; or

7.4.7.3 the situation has not otherwise been resolved;

the *Employer* shall advise the Replacement Contractor and/or Replacement Sub-Contractor, as appropriate that it may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

7.4.8 Subject to the Replacement Contractor and/or Replacement Sub-Contractor acting in accordance with the provisions of paragraphs 7.4.5 to 7.4.7 of Part D of this Contract Schedule and in accordance with all applicable proper employment procedures set out in the *law of the contract*, the *Contractor* shall indemnify the Replacement Contractor and/or Replacement Sub-Contractor against all Employee Liabilities arising out of the termination pursuant to the provisions of paragraph 7.3.7 of Part D of this Contract Schedule provided that the Replacement Contractor takes, or shall procure that the Replacement Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.

7.4.9 The indemnity in paragraph 7.4.8 of Part D of this Contract Schedule

7.4.9.1 shall not apply to:

(a) any claim for

(i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or

(ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Replacement Contractor and/or Replacement Sub-Contractor; or

- (b) any claim that the termination of employment was unfair because the Replacement Contractor and/or Replacement Sub-Contractor neglected to follow a fair dismissal procedure; and
- 7.4.9.2 shall apply only where the notification referred to in paragraph 7.4.5.1 of Part D of this Contract Schedule is made by the Replacement Contractor and/or Replacement Sub-Contractor to the *Contractor* within six (6) months of the Service Transfer Date.
- 7.4.10 If any such person as is described in paragraph 7.4.5 of Part D of this Contract Schedule is neither re-employed by the *Contractor* or any Sub-Contractor nor dismissed by the Replacement Contractor and/or Replacement Sub-Contractor within the time scales set out in paragraphs 7.4.5 to 7.4.7 of Part D of this Contract Schedule, such person shall be treated as a Transferring Contractor Employee and the Replacement Contractor and/or Replacement Sub-Contractor shall comply with such obligations as may be imposed upon it under the *law of the contract*.
- 7.4.11 The *Contractor* shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of the Transferring Contractor Employees up to (but not including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:
 - 7.4.11.1 the *Contractor* and/or any Sub-Contractor; and
 - 7.4.11.2 the Replacement Contractor and/or the Replacement Sub-Contractor.
- 7.4.12 The *Contractor* shall, and shall procure that each Sub-Contractor shall, promptly provide to the *Employer* and any Replacement Contractor and/or Replacement Sub-Contractor, in writing such information as is necessary to enable the *Employer*, the Replacement Contractor and/or Replacement Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The *Employer* shall procure that the Replacement Contractor and/or Replacement Sub-Contractor shall promptly provide to the *Contractor* and each Sub-Contractor in writing such information as is necessary to enable the *Contractor* and each Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations.
- 7.4.13 Subject to paragraph 7.4.14 of Part D of this Contract Schedule, the *Employer* shall procure that the Replacement Contractor indemnifies the *Contractor* on its own behalf and on behalf of any Replacement Sub-Contractor and its sub-contractors against any Employee Liabilities in

respect of each Transferring Contractor Employee (or, where applicable any employee representative (as defined in the Employment Regulations) of any Transferring Contractor Employee) arising from or as a result of:

- 7.4.13.1 any act or omission of the Replacement Contractor and/or Replacement Sub-Contractor;
- 7.4.13.2 the breach or non-observance by the Replacement Contractor and/or Replacement Sub-Contractor on or after the Service Transfer Date of:
 - (a) any collective agreement applicable to the Transferring Contractor Employees; and/or
 - (b) any custom or practice in respect of any Transferring Contractor Employees which the Replacement Contractor and/or Replacement Sub-Contractor is contractually bound to honour;
- 7.4.13.3 any claim by any trade union or other body or person representing any Transferring Contractor Employees arising from or connected with any failure by the Replacement Contractor and/or Replacement Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
- 7.4.13.4 any proposal by the Replacement Contractor and/or Replacement Sub-Contractor to change the terms and conditions of employment or working conditions of any Transferring Contractor Employees on or after their transfer to the Replacement Contractor or Replacement Sub-Contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Contractor Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- 7.4.13.5 any statement communicated to or action undertaken by the Replacement Contractor or Replacement Sub-Contractor to, or in respect of, any Transferring Contractor Employee on or before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the *Contractor* in writing;
- 7.4.13.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (a) in relation to any Transferring Contractor Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and

- (b) in relation to any employee who is not a Transferring Contractor Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the *Contractor* or Sub-Contractor, to the Replacement Contractor or Replacement Sub-Contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;
- 7.4.13.7 a failure of the Replacement Contractor or Replacement Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Contractor Employees in respect of the period from (and including) the Service Transfer Date; and
- 7.4.13.8 any claim made by or in respect of a Transferring Contractor Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Contractor Employee relating to any act or omission of the Replacement Contractor or Replacement Sub-Contractor in relation to obligations under regulation 13 of the Employment Regulations.
- 7.4.14 The indemnities in paragraph 7.4.3 of Part D of this Contract Schedule shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the *Contractor* and/or any Sub-Contractor (as applicable) whether occurring or having its origin before, on or after the Relevant Transfer Date, including any Employee Liabilities arising from the failure by the *Contractor* and/or any Sub-Contractor (as applicable) to comply with its obligations under the Employment Regulations.

ANNEX 1: PENSIONS – Not Applicable

The provisions of this Annex shall apply in respect of the Transferring Employees who transfer from the *Employer* to the *Contractor*.

ANNEX 2: LIST OF NOTIFIED SUBCONTRACTORS

SUBCONTRACTOR TABLE SUBMITTED IN ITT RESPONSE:

Document ref: Contract Schedule I – Annex 2 Subcontractor Table

CONTRACT SCHEDULE J

SECURITY PROVISIONS

8. CONTRACT SCHEDULE J - SECURITY PROVISIONS

8.1 Definitions

For the purposes of this schedule the following terms shall have the meanings given below:

"Affiliates"	in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time;
"Breach of Security"	<p>in accordance with the Security Requirements and the Security Policy, the occurrence of:</p> <ul style="list-style-type: none">(a) any unauthorised access to or use of the service, the Employer Premises, the Sites, the Contractor System and/or any ICT, information or data (including the Confidential Information and the Employer Data) used by the <i>Employer</i> and/or the <i>Contractor</i> in connection with this contract; and/or(b) the loss and/or unauthorised disclosure of any information or data (including the Confidential Information and the Employer Data), including any copies of such information or data, used by the <i>Employer</i> and/or the <i>Contractor</i> in connection with this contract.
"Clearance"	means national security clearance and employment checks undertaken by and/or obtained from the Defence Vetting Agency;
"Commercially Sensitive Information"	the information agreed between the parties (if any) comprising the information of a commercially sensitive nature relating to the <i>Contractor</i> , its IPR or its business or which the <i>Contractor</i> has indicated to the <i>Employer</i> that, if disclosed by the <i>Employer</i> , would cause the <i>Contractor</i> significant commercial disadvantage or material financial loss;
"Confidential Information"	the <i>Employer's</i> Confidential Information and/or the <i>Contractor's</i> Confidential Information;
"Contracting Body"	any Contracting Body as defined in Regulation 5(2) of the Public Contracts (Works, Service and Supply) (Amendment) Regulations 2000 other than the <i>Employer</i> .
"Contractor's Confidential Information"	any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and contractors of the <i>Contractor</i> , including IPRs, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential")

	or which ought reasonably to be considered to be confidential, including the Commercially Sensitive Information;
"Contractor Equipment"	the hardware, computer and telecoms devices and equipment supplied by the <i>Contractor</i> or its Subcontractors (but not hired, leased or loaned from the <i>Employer</i>) for the provision of the <i>service</i> ;
"Contractor Software"	software which is proprietary to the <i>Contractor</i> , including software which is or will be used by the <i>Contractor</i> for the purposes of providing the <i>service</i> ;
"Contractor System"	the information and communications technology system used by the <i>Contractor</i> in performing the <i>service</i> including the Software, the <i>Contractor</i> Equipment and related cabling (but excluding the <i>Employer</i> System);
"Control"	means that a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and "Controls" and "Controlled" shall be interpreted accordingly;
"Crown Body"	any department, office or agency of the Crown;
"Default"	any breach of the obligations of the relevant party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or statement of the relevant party, its employees, servants, agents or Sub contractors in connection with or in relation to the subject-matter of this contract and in respect of which such party is liable to the other;
"Dispute Resolution Procedure"	the dispute resolution procedure set out in this contract (if any) or as agreed between the parties;
"Employer Confidential Information"	all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and contractors of the <i>Employer</i> , including all IPRs, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered to be confidential, including but not limited to Information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all personal data and sensitive personal data within the meaning of the DPA
"Employer Premises"	means premises owned, controlled or occupied by the <i>Employer</i> or its Affiliates which are made available for use

by the *Contractor* or its Subcontractors for provision of the *service* (or any of them) on the terms set out in this contract or any separate agreement or licence;

"Employer System"	the <i>Employer's</i> computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the <i>Employer</i> or the <i>Contractor</i> in connection with this contract which is owned by or licensed to the <i>Employer</i> by a third party and which interfaces with the <i>Contractor</i> System or which is necessary for the <i>Employer</i> to receive the <i>service</i> ;
"Environmental Information Regulations"	the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such regulations;
"FOIA"	the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such legislation;
"Good Industry Practice"	the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector;
"ICT"	information and communications technology;
"ICT Environment"	the <i>Employer</i> System and the <i>Contractor</i> System;
"Impact Assessment"	an assessment of a Change Request;
"Information"	has the meaning given under section 84 of the Freedom of Information Act 2000;
"Information Assets Register"	the register of information assets to be created and maintained by the <i>Contractor</i> throughout the <i>service period</i> as described in the contract (if any) or as otherwise agreed between the parties;
"Intellectual Property Rights" or "IPRs"	<p>(a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information;</p> <p>(b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and</p>

	(c) all other rights having equivalent or similar effect in any country or jurisdiction;
"ISMS"	the Information Security Management System as defined by ISO/IEC 27001. The scope of the ISMS will be as agreed by the parties and will directly reflect the scope of the service;
"Know-How"	all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know how relating to the <i>service</i> but excluding know how already in the <i>Contractor's</i> or the <i>Employer's</i> possession before this contract;
"List x"	means, in relation to a Subcontractor, one who has been placed on List x in accordance with Ministry of Defence guidelines and procedures, due to that Sub contractor undertaking work on its premises marked as CONFIDENTIAL or above;
"Malicious Software"	any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;
"Process"	has the meaning given to it under the Data Protection Legislation but, for the purposes of this contract, it shall include both manual and automatic processing;
"Protectively Marked"	shall have the meaning as set out in the Security Policy Framework.
"Regulatory Bodies"	those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this contract or any other affairs of the <i>Employer</i> and "Regulatory Body" shall be construed accordingly;
"Request for Information"	a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations;
"Security Management Plan"	the <i>Contractor's</i> security plan prepared pursuant to paragraph 10.5.3 of schedule J (Security Management Plan) an outline of which is set out in Appendix 1 of schedule J (Security Management Plan);
"Security Policy Framework"	means the Cabinet Office Security Policy Framework (available from the Cabinet Office Security Policy Division);

"Security Requirements"	means the requirements in the contract relating to security of the provision of the service (if any) or such other requirements as the <i>Employer</i> may notify to the <i>Contractor</i> from time to time
"Security Tests"	shall have the meaning set out in paragraph 2.4.1 of Part 2 of this Contract Schedule J (Security Management Plan);
"Service Levels"	the levels of <i>service</i> required to be provided, as prescribed in this contract (if any) or as otherwise agreed by the parties;
"Sites"	any premises from which the <i>service</i> are provided or from which the <i>Contractor</i> manages, organises or otherwise directs the provision or the use of the <i>service</i> or where any part of the <i>Contractor</i> System is situated or where any physical interface with the <i>Employer</i> System takes place;
"Software"	Specially Written Software, <i>Contractor</i> Software and Third Party Software;
"Specially Written Software"	any software created by the <i>Contractor</i> (or by a third party on behalf of the <i>Contractor</i>) specifically for the purposes of this contract;
"Staff Vetting Procedures"	the <i>Employer's</i> procedures and departmental policies for the vetting of personnel whose role will involve the handling of information of a sensitive or confidential nature or the handling of information which is subject to any relevant security measures, including, but not limited to, the provisions of the Official Secrets Act 1911 to 1989;
"Statement of Applicability"	shall have the meaning set out in ISO/IEC 27001 and as agreed by the parties during the procurement phase;
"Standards"	the British or international standards,[<i>Employer's</i> internal policies and procedures, Government codes of practice and guidance together with any other specified policies or procedures referred to in this contract (if any) or as otherwise agreed by the parties;
"Third Party Software"	software which is proprietary to any third party other than an Affiliate of the <i>Contractor</i> which is or will be used by the <i>Contractor</i> for the purposes of providing the <i>service</i> ; and

8.2 Introduction

8.2.1 This schedule covers:

- 8.2.1.1 principles of protective security to be applied in Providing the Service;
- 8.2.1.2 wider aspects of security relating to Providing the Service;
- 8.2.1.3 the development, implementation, operation, maintenance and continual improvement of an ISMS;

- 8.2.1.4 the creation and maintenance of the Security Management Plan;
- 8.2.1.5 audit and testing of ISMS compliance with the Security Requirements;
- 8.2.1.6 conformance to ISO/IEC 27001 (Information Security Requirements Specification) and ISO/IEC27002 (Information Security Code of Practice) and;
- 8.2.1.7 obligations in the event of actual, potential or attempted breaches of security.

8.3 Principles of Security

- 8.3.1 The *Contractor* acknowledges that the *Employer* places great emphasis on the confidentiality, integrity and availability of information and consequently on the security provided by the ISMS.
- 8.3.2 The *Contractor* shall be responsible for the effective performance of the ISMS and shall at all times provide a level of security which:
 - 8.3.2.1 is in accordance with Good Industry Practice, the *law of the contract* and this contract;
 - 8.3.2.2 complies with the Security Policy;
 - 8.3.2.3 complies with at least the minimum set of security measures and standards as determined by the Security Policy Framework (Tiers 1-4) available from the Cabinet Office Security Policy Division (COSPD);
 - 8.3.2.4 meets any specific security threats to the ISMS; and
 - 8.3.2.5 complies with ISO/IEC27001 and ISO/IEC27002 in accordance with paragraph 8.3.2 of this schedule;
 - 8.3.2.6 complies with the Security Requirements; and
 - 8.3.2.7 complies with the *Employer's* ICT standards.
- 8.3.3 The references to standards, guidance and policies set out in paragraph 8.3.2.2 shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, from time to time.
- 8.3.4 In the event of any inconsistency in the provisions of the above standards, guidance and policies, the *Contractor* gives an early warning to the *Service Manager* of such inconsistency immediately upon becoming aware of the same, and the *Service Manager* shall, as soon as practicable, advise the *Contractor* which provision the *Contractor* shall be required to comply with.

8.4 ISMS and Security Management Plan

- 8.4.1 Introduction:
 - 8.4.1.1 The *Contractor* shall develop, implement, operate, maintain and continuously improve and maintain an ISMS which will, without prejudice to paragraph 8.3.2, be approved, by the *Service Manager*, tested in accordance with the provisions relating to testing as set out in the contract (if any) or as otherwise agreed

between the parties, periodically updated and audited in accordance with ISO/IEC 27001.

- 8.4.1.2 The *Contractor* shall develop and maintain a Security Management Plan in accordance with this Schedule to apply during the *service period*.
- 8.4.1.3 The *Contractor* shall comply with its obligations set out in the Security Management Plan.
- 8.4.1.4 Both the ISMS and the Security Management Plan shall, unless otherwise specified by the *Employer*, aim to protect all aspects of the *service* and all processes associated with Providing the Service, including the Affected Property, the *Contractor* System and any ICT, information and data (including the Employer Confidential Information and the Employer Data) to the extent used by the *Employer* or the *Contractor* in connection with this contract.

8.4.2 Development of the Security Management Plan:

- 8.4.2.1 Within 20 Working Days after the Contract Date and in accordance with paragraph 8.4.4 (Amendment and Revision), the *Contractor* will prepare and deliver to the *Service Manager* for approval a fully complete and up to date Security Management Plan which will be based on the draft Security Management Plan set out in Appendix 2 of this Part 2 of this Contract Schedule J.
- 8.4.2.2 If the Security Management Plan, or any subsequent revision to it in accordance with paragraph 8.4.4 (Amendment and Revision), is approved by the *Service Manager* it will be adopted immediately and will replace the previous version of the Security Management Plan at Appendix 2 of this Part 2 of this Contract Schedule J. If the Security Management Plan is not approved by the *Service Manager* the *Contractor* shall amend it within 10 Working Days or such other period as the parties may agree in writing of a notice of non-approval from the *Service Manager* and re-submit to the *Service Manager* for approval. The parties will use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than 15 Working Days (or such other period as the parties may agree in writing) from the date of its first submission to the *Service Manager*. If the *Service Manager* does not approve the Security Management Plan following its resubmission, the matter will be resolved in accordance with the Dispute Resolution Procedure. No approval to be given by the *Service Manager* pursuant to this paragraph 8.4.2.2 of this schedule may be unreasonably withheld or delayed. However any failure to approve the Security Management Plan on the grounds that it does not comply with the requirements set out in paragraph 8.4.3.4 shall be deemed to be reasonable.

8.4.3 Content of the Security Management Plan:

- 8.4.3.1 The Security Management Plan will set out the security measures to be implemented and maintained by the *Contractor* in relation to all aspects of the *service* and all processes associated with Providing the Service and shall at all times comply with and specify security measures and procedures which are sufficient to ensure that the *service* comply with the provisions of this schedule (including the principles set out in paragraph 8.3);
- 8.4.3.2 The Security Management Plan (including the draft version) should also set out the plans for transiting all security arrangements and responsibilities from those

in place at the Contract Date to those incorporated in the *Contractor's* ISMS at the date notified by the *Service Manager* to the *Contractor* for the *Contractor* to meet the full obligations of the Security Requirements.

8.4.3.3 The Security Management Plan will be structured in accordance with ISO/IEC27001 and ISO/IEC27002, cross-referencing if necessary to other schedules of this contract which cover specific areas included within that standard.

8.4.3.4 The Security Management Plan shall be written in plain English in language which is readily comprehensible to the staff of the *Contractor* and the *Employer* engaged in the *service* and shall only reference documents which are in the possession of the *Employer* or whose location is otherwise specified in this schedule.

8.4.4 Amendment and Revision of the ISMS and Security Management Plan:

8.4.4.1 The ISMS and Security Management Plan will be fully reviewed and updated by the *Contractor* annually or from time to time to reflect:

- (a) emerging changes in Good Industry Practice;
- (b) any change or proposed change to the Contractor System, the *service* and/or associated processes;
- (c) any new perceived or changed security threats; and
- (d) any reasonable request by the *Service Manager*.

8.4.4.2 The *Contractor* will provide the *Service Manager* with the results of such reviews as soon as reasonably practicable after their completion and amend the ISMS and Security Management Plan at no additional cost to the *Employer*. The results of the review should include, without limitation:

- (a) suggested improvements to the effectiveness of the ISMS;
- (b) updates to the risk assessments;
- (c) proposed modifications to the procedures and controls that effect information security to respond to events that may impact on the ISMS; and
- (d) suggested improvements in measuring the effectiveness of controls.

8.4.4.3 On receipt of the results of such reviews, the *Service Manager* will approve any amendments or revisions to the ISMS or Security Management Plan in accordance with the process set out at paragraph 8.4.2.2.

8.4.4.4 Any change or amendment which the *Contractor* proposes to make to the ISMS or Security Management Plan (as a result of a *Service Manager's* request or change to the *service* or otherwise) shall be subject to the early warning procedure and shall not be implemented until approved in writing by the *Service Manager*.

8.4.5 Testing

- 8.4.5.1 The *Contractor* shall conduct tests of the ISMS ("Security Tests") on an annual basis or as otherwise agreed by the parties. The date, timing, content and conduct of such Security Tests shall be agreed in advance with the *Service Manager*.
- 8.4.5.2 The *Service Manager* shall be entitled to witness the conduct of the Security Tests. The *Contractor* shall provide the *Service Manager* with the results of such tests (in a form approved by the *Employer* in advance) as soon as practicable after completion of each Security Test.
- 8.4.5.3 Without prejudice to any other right of audit or access granted to the *Employer* pursuant to this contract, the *Service Manager* and/or its authorised representatives shall be entitled, at any time and without giving notice to the *Contractor*, to carry out such tests (including penetration tests) as it may deem necessary in relation to the ISMS and the *Contractor's* compliance with the ISMS and the Security Management Plan. The *Service Manager* may notify the *Contractor* of the results of such tests after completion of each such test. Security Tests shall be designed and implemented so as to minimise the impact on the delivery of the *service*. If such tests adversely affect the *Contractor's* ability to deliver the *service* to the agreed Service Levels, the *Contractor* shall be granted relief against any resultant under-performance for the period of the tests.
- 8.4.5.4 Where any Security Test carried out pursuant to paragraphs 8.4.5.2 or 8.4.5.3 above reveals any actual or potential Breach of Security, the *Contractor* shall promptly notify the *Service Manager* of any changes to the ISMS and to the Security Management Plan (and the implementation thereof) which the *Contractor* proposes to make in order to correct such failure or weakness. Subject to the *Service Manager's* approval in accordance with paragraph 8.4.1.1, the *Contractor* shall implement such changes to the ISMS and the Security Management Plan in accordance with the timetable agreed with the *Service Manager* or, otherwise, as soon as reasonably possible. For the avoidance of doubt, where the change to the ISMS or Security Management Plan to address a non-compliance with the Security Policy or Security Requirements the change to the ISMS or Security Management Plan shall be at no cost to the *Employer*.

8.5 Compliance with ISO/IEC 27001

- 8.5.1 Unless otherwise agreed by the parties, the *Contractor* shall obtain independent certification of the ISMS to ISO/IEC 27001 within 12 months of the Contract Date and shall maintain such certification for the duration of the contract.
- 8.5.2 In the event that paragraph 8.5.1 above applies, if certain parts of the ISMS do not conform to Good Industry Practice, or controls as described in ISO/IEC 27002 are not consistent with the Security Policy, and, as a result, the *Contractor* reasonably believes that it is not compliant with ISO/IEC 27001, the *Contractor* shall promptly notify the *Service Manager* of this and the *Employer* in its absolute discretion may waive the requirement for certification in respect of the relevant parts.
- 8.5.3 The *Service Manager* shall be entitled to carry out such regular security audits as may be required and in accordance with Good Industry Practice, in order to ensure that the ISMS maintains compliance with the principles and practices of ISO 27001.

8.5.4 If, on the basis of evidence provided by such audits, it is the *Service Manager's* reasonable opinion that compliance with the principles and practices of ISO/IEC 27001 is not being achieved by the *Contractor*, then the *Service Manager* shall notify the *Contractor* of the same and give the *Contractor* a reasonable time (having regard to the extent and criticality of any non-compliance and any other relevant circumstances) to become compliant with the principles and practices of ISO/IEC 27001. If the *Contractor* does not become compliant within the required time then the *Service Manager* has the right to obtain an independent audit against these standards in whole or in part.

8.5.5 If, as a result of any such independent audit as described in paragraph 8.5.4 the *Contractor* is found to be non-compliant with the principles and practices of ISO/IEC 27001 then the *Contractor* shall, at its own expense, undertake those actions required in order to achieve the necessary compliance and shall reimburse in full the costs incurred by the *Employer* in obtaining such audit.

8.6 Breach of Security

8.6.1 Either party shall give an early warning to the other in accordance with the agreed security incident management process as defined by the ISMS upon becoming aware of any Breach of Security or any potential or attempted Breach of Security.

8.6.2 Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in paragraph 12.7.1, the *Contractor* shall:

8.6.2.1 immediately take all reasonable steps necessary to:

(a) remedy such breach or protect the integrity of the ISMS against any such potential or attempted breach or threat; and

(b) prevent an equivalent breach in the future.

such steps shall include any action or changes reasonably required by the *Service Manager*; and

8.6.2.2 as soon as reasonably practicable provide to the *Service Manager* full details (using such reporting mechanism as defined by the ISMS) of the Breach of Security or the potential or attempted Breach of Security.

ANNEX 1 – Security Policy

Relevant HMRC and HM Government Security policies are in Attachment 3
Annex F – HMRC and HMGOV Policies

ANNEX 2 – Security Management Plan

Security Response submitted in ITT:

Documents Ref:

- 1. Contract Schedule J Annex 2 – BCP**
- 2. Contract Schedule J – AQA5 Security Interserve Response**
- 3. Contract Schedule J – AQA5 Security Interserve Response 2**
- 4. Contract Schedule J – AQA5 Security Interserve Response 3**
- 5. Contract Schedule J – AQA5 Security Interserve Response 4**

Security Management Plan to be agreed between the Contractor and Employer during the Mobilisation period

CONTRACT SCHEDULE K

MANAGEMENT INFORMATION

9. CONTRACT SCHEDULE K - MANAGEMENT AND PERFORMANCE INFORMATION

- 9.1 The Contractor shall work with the Employer to agree management and reporting requirements in Mobilisation and prior to contract commencement date.
- 9.2 The management and Performance information is set out within the Specifications, relevant extracts of which are set out below. The final agreed MI and reporting requirements will include but not be limited to the requirements set out in this schedule.

10. CONTRACT SCHEDULE K MANAGEMENT INFORMATION AND REPORTING REQUIREMENTS

Management Information and reporting requirements as set out within the ITT tender documentation:

Document ref: Contract Schedule K – Management information HMRC

Management Information response submitted in ITT:

Documents ref:

- 1. Contract Schedule K - AQA8 Interserve Response**
- 2. Contract Schedule k – AQA8 Appendix 1 Interserve Response**

CONTRACT SCHEDULE L
OPERATIONAL KEY PERFORMANCE INDICATORS

11. CONTRACT SCHEDULE L - OPERATIONAL KEY PERFORMANCE INDICATORS

This schedule sets out the *Employer's* specific KPIs and weightings as per Annex 1 Monthly KPI Measures Model.

KPI MODEL INTERSERVE:

Document ref: Contract Schedule L – Interserve KPI Model Yr 1 AGREED

CONTRACT SCHEDULE M – Not Required

12. CONTRACT SCHEDULE N

PRICES FOR TASK ORDERS

11. CONTRACT SCHEDULE N – PRICES FOR TASK ORDERS

11.1 Introduction

11.1.1 This schedule prescribes the procedure, calculations and rates to be used by the *Service Manager* and *Contractor* when assessing the Prices for Task Orders. Works described in this Contract Schedule are instructed as Task Orders and are not compensation events.

11.1.2 The following definitions shall apply to this Schedule:

11.1.2.1 Billable Works mean Works that become billable due to falling into the exclusions identified in clause 14.2.6 or exceeding the Comprehensive Liability Threshold.

11.1.2.2 Business Critical Events means the events set out in Contract Schedule A, Data Part One – Data Provided by the *Employer*, or an event which relates to the immediate security or health and safety of an Affected Property and mitigation of Business Continuity and Disaster Recovery risks.

11.1.2.3 Comprehensive Liability Threshold means the value set out in Contract Schedule A, Data Part One – Data Provided by the *Employer*.

11.1.2.4 Project Management Percentage Uplift means those rates set out in Contract Schedule E – The Price List.

11.1.2.5 Resource Rates means those rates set out as such in the Price List.

11.1.2.6 Tier One New Works means works with a total estimated value range as set out in Contract Schedule A, Data Part One – Data Provided by the *Employer*.

11.1.2.7 Tier Two New Works means works with a total estimated value range as set out in Contract Schedule A, Data Part One – Data Provided by the *Employer*.

11.1.2.8 Tier Three New Works means works with a total estimated value range as set out in Contract Schedule A, Data Part One – Data Provided by the *Employer*.

11.1.2.9 Tier Four New Works means works with a total estimated value range as set out in Contract Schedule A, Data Part One – Data Provided by the *Employer*.

11.2 Commercial Requirements

11.2.1 New Works

11.2.1.1 New Works shall all be authorised in accordance with Framework Schedule 2 Part A Annex 2 - New Works and Approvals Process. New Works may be required by the *Employer*.

11.2.1.2 The *Employer* may require these New Works:

- (a) to be managed and executed by the *Contractor*;
- (b) to be managed by any third party and executed by the *Contractor*;

- (c) to be managed by the *Contractor* and executed by suppliers under the Framework (other than the *Contractor*); or
- (d) to be managed by the *Contractor* and executed by any third party.

11.2.1.3 Any quotation for New Works shall breakdown the costs in the categories below (in addition to any other applicable cost category;

- (a) labour;
- (b) parts;
- (c) replacement Assets;
- (d) materials;
- (e) profit and overheads; and
- (f) Project Management Percentage Uplift (where applicable).

11.2.2 Quotation and Tenders for New Works

11.2.2.1 Where the *Service Manager* gives instructions to the *Contractor* to manage and/or execute New Works of a certain value (value to be determined at Further Competition) the following shall apply:

- (a) Tier One New Works shall be managed and executed by the *Contractor* and valued in accordance with the rates set out in the agreed Resource Rates. The *Contractor* shall provide the *Service Manager* with an estimate of costs and shall not commence any Tier One New Works until approval has been granted by the *Employer* to proceed to completion.
- (b) Tier Two New Works shall be managed and executed by the *Contractor*. Where instructed by the *Service Manager*, the *Contractor* shall obtain three written quotations. The *Contractor* shall not commence any Tier Two New Works until approval has been granted by the *Service Manager* to proceed to completion.
- (c) Tier Three New Works shall be managed and executed by the *Contractor*. Where instructed by the *Service Manager*, the *Contractor* shall obtain three formal tenders under the *Contractor's* defined procurement process. The *Contractor* shall not commence any Tier Three New Works until approval has been granted by the *Service Manager* to proceed to completion.
- (d) Tier Four New Works shall be managed and executed by the *Contractor*. Where instructed by the *Service Manager*, the *Contractor* shall obtain five formal tenders under the *Contractor's* defined procurement process.

The *Contractor* shall not commence any Tier Four New Works until approval has been granted by the *Service Manager* to proceed to completion.

- (e) The *Contractor* shall seek approval from the *Service Manager* prior to proceeding on any Billable Works with the exception of
 - (i) Billable Works up to the value specified in the Contract Schedule A, Data Part One – Data Provided by the Employer; or
 - (ii) New Works required as a consequence of a Business Critical Event.

The *Employer* shall not unreasonably withhold approval of values; however the *Contractor* shall retrospectively follow the above defined processes during the next Working Day.

- (f) Where New Works arise as a result of any
 - (i) Reactive Maintenance Works where the costs exceed the Comprehensive Liability Threshold,
 - (ii) Works that are Small Works, or
 - (iii) Works Arising from Planned Maintenance

the New Works shall not proceed until an instruction is received from the *Service Manager* in writing or via the CAFM System.

11.2.3 Projects

- 11.2.3.1 The *Service Manager* may decide that the New Works should be allocated a specific resource dedicated to providing a project management service, i.e. that the New Works are a Project.
- 11.2.3.2 If the *Service Manager* does not specify this requirement at the initiation of a New Works request, the *Contractor* may provide a quotation which includes this. However acceptance of this service must be approved in advance by the *Service Manager*.
- 11.2.3.3 This Project Management Percentage Uplift will be in addition to any costs for other professional services related to the delivery of the Project, for example architects or professional space planning services. However this will not apply to the services of a project or programme management discipline (for example, CDM co-ordinator). Such costs would be expected to be borne within the Project Management Percentage Uplift.
- 11.2.3.4 The Project Management Percentage Uplift shall always be applied to the value of the Project prior to any other uplift, for example profit and overheads

- 11.2.3.5 The *Contractor* shall provide evidence of the resource allocation to be provided in discharging this service at the time of quotation or tender and this must be agreed as acceptable by the *Employer* prior to any works commencing.

This shall be evidenced clearly in the quotation for works, and shall include as a minimum:

- (i) Resource / trade rates to be applied;
- (ii) Number of hours activity expected;
- (iii) Any travel or other expenses expected to be incurred; and
- (iv) Any additional resources required to discharge the service.

- 11.2.3.6 Where the *Contractor* cannot demonstrate that the entire resource indicated above has been delivered whilst discharging the works, the *Employer* reserves the right to withhold a proportion of or the whole project management fee as deemed appropriate. The *Service Manager* will be the final arbiter in such circumstances and it is for the *Contractor* to demonstrate that this Project has been delivered as expected to the levels or resource time quoted for.

11.2.4 Not Used

11.2.5 Comprehensive Liability Threshold

- 11.2.5.1 The *Contractor* shall note that with the exception of emergencies or Business Critical Events, no activity with a value in excess of the agreed Comprehensive Liability Threshold shall be undertaken without a Task Order instructed via the *Service Manager*
- 11.2.5.2 Where costs of Reactive Maintenance exceed the Comprehensive Liability Threshold, only the cost above this value shall be billed to the *Employer* through the approval process as detailed in Framework Schedule 2 Part A Annex 2 – New Works and Approvals Process.
- 11.2.5.3 The *Contractor* shall supply and install all parts associated with Reactive Maintenance at its own cost. The *Contractor* shall note that for the avoidance of doubt, that this requirement includes the replacement of entire Assets as well as component part of Assets where replacement is deemed appropriate.
- 11.2.5.4 The *Contractor* shall maximise the benefits of its own buying power supply agreements to offer the most advantageous commercial position to the *Employer* to ensure value for money. Any negotiated discounts applied against current trade price levels shall be passed to the *Employer* in full. Where appropriate the *Contractor* shall utilise the *Employer's* Contractor parts agreements, where any such agreements exist.
- 11.2.5.5 The *Contractor* shall source parts at the most cost effective terms and in recognition of quality and delivery time requirements. The *Contractor* and the *Employer* shall agree in advance the use of refurbished parts where they are deemed to be cost beneficial without any loss of service or as required in order to achieve required return to full operational service.

- 11.2.5.6 In the event of emergencies or Business Critical Events, the *Contractor* may proceed with remedial action without prior approval from the *Employer*. These events shall be defined as Business Critical works. The *Contractor* shall seek formal approval from the *Employer* by email and/or telephone as soon as is operationally possible, and shall keep the *Employer* advised at all times on the technical and financial status of the task. The *Employer* shall not unreasonably withhold approval of values; however the *Contractor* shall retrospectively follow the above defined processes during the next Working Day.

11.2.6 Hard FM General Requirements and Exclusions

- 11.2.6.1 Where works fall into the following categories, they are exclusions to the Lump Sum Price and charges will be subject to review and agreement between the *Contractor* and the *Employer* during Monthly contract performance meetings. Where charges apply, they will be considered via the New Works and Approvals process. This will include but not be limited to:

- (a) Equipment Beyond Economic Repair;
- (b) Misuse of an Asset and/or abuse of an Asset where this can be proven by the *Contractor*;
- (c) Damage or failure if due to continued use by the *Employer* or Building User after fault has been diagnosed and the *Contractor* has advised the *Employer* not to use the Asset;
- (d) The Building User not following the *Employer* or manufacturer's operating procedural Standards;
- (e) Other unapproved *Contractors* repairing Assets;
- (f) Water or cleaning fluid damage due to incorrect cleaning procedures by Building Users;
- (g) Damage or failure due to electrical supplies being interrupted or altered by others;
- (h) Access denied to the *Contractor* where access had been agreed and prearranged;
- (i) *Employer* specifies a Compensation Event;
- (j) Fire, leaks, act of god, storm damage, floods or similar force majeure; unless caused by an act or failure of the *Contractor*;
- (k) New Works;
- (l) That part of the cost of the Reactive Maintenance Services for an event which exceeds the Comprehensive Liability Threshold;
- (m) Operator error by a Building User, where this can be proven by the *Contractor*.

- 11.2.6.2 The above listed works include Works Arising from Planned Maintenance.
- 11.2.6.3 A schedule of works arising from events listed in paragraph 11.2.6.1 above shall be provided to the *Employer* on a monthly basis and payment will be made through the defined approval process as agreed between the *Employer* and the *Contractor*.

CONTRACT SCHEDULE O
PAYMENT MECHANISM

12. CONTRACT SCHEDULE O – PAYMENT MECHANISM

1.0 Definitions

Adjustment Date	the date at which indexation is to be applied on each anniversary of the <i>starting date</i> . The first Adjustment Date is stated in Contract Schedule A – Contract Data Part One. Subsequent Adjustment Dates are on each anniversary of the first Adjustment Date.
Contract Day	a calendar day during the <i>service period</i> .
Contract Month(n)	a calendar month during the <i>service period</i> , referred to as “n”.
Contract Year	each annual period during the <i>service period</i> , starting on the <i>starting date</i> , and each anniversary thereof.
Indexed Monthly Payment	is an amount due which forms part of the Monthly Payment and is calculated in accordance with the formula for the Indexed Monthly Payment identified in this Contract Schedule O.
Monthly Disbursement	is the amount of disbursements, if any, paid by the <i>Contractor</i> on behalf of the <i>Employer</i> (excluding any VAT) within the Previous Contract Month “n-1” and which are identified within the Service Information as a disbursement that the <i>Contractor</i> may reclaim from the <i>Employer</i> for reimbursement.
Monthly Payment	is the amount due at each assessment date calculated in accordance with this Contract Schedule O.
Payment Index	is the index identified in Contract Schedule A – Contract Data Part One.
Previous Contract Month(n-1)	is the calendar month, referred to as “n-1” during the <i>service period</i> immediately prior to the relevant Contract Month “n”.
Monthly Total Value at Risk	is 6% of the sum of the Indexed Monthly Payment and Un-Indexed Monthly Payment of the relevant Contract Month.
Un-Indexed Monthly Payment	<p>is an amount due which forms part of the Monthly Payment and which is calculated differently depending on whether the relevant Monthly Payment is before or after the first Adjustment Date. The Un-Indexed Monthly Payment is calculated as follows:</p> <p>a) Before the first Adjustment Date it is: One twelfth (1/12) of the total of the Prices (excluding adjustments for compensation events) identified in the Price List for the relevant Contract Year plus the cost of compensation events falling due for payment within the relevant Contract Month</p> <p>or</p> <p>b) After the first Adjustment Date: The cost of compensation events for the relevant Contract Month which:</p> <ul style="list-style-type: none">• fall due for payment within the relevant Contract Month; and

- have been assessed by the *Service Manager* after the last Adjustment Date.

2.0 CALCULATION OF THE MONTHLY PAYMENT

2.1 The Monthly Payment, MP_n , in respect of a Contract Month “n” shall be calculated in accordance with the following formula:

$$MP_n = IMP_n + UMP_n + MD_{n-1} + TO_{n-1} - PD_{n-1} \quad (1)$$

where:

- MP_n is the Monthly Payment to be determined in respect of the Contract Month “n”;
- IMP_n is the Indexed Monthly Payment for Contract Month “n”;
- UMP_n is the Un-indexed Monthly Payment for Contract Month “n”;
- MD_{n-1} is the Monthly Disbursement evidenced by invoices;
- TO_{n-1} is the total of the prices for Tasks which have reached Task Completion during the Previous Contract Month; and
- PD_{n-1} is the performance deduction in respect of the Previous Contract Month for failure against the KPIs in accordance with clause X20 (Management and Performance Information).

Monthly Payment at Final Contract Month

2.2 Equation (1) is superseded by equation (2) at final Contract Month:

$$MP_n = IMP_n + UMP_n + MD_{n-1} + TO_{n-1} - (2 \times PD_{n-1}) \quad (2)$$

2.3 The terms are consistent with those given above.

Monthly Payment following Final Contract Month

- 2.4 A balancing payment to reflect the performance deduction in the final Contract Month will be paid to, or deducted from, the sums due to the *Contractor* following the assessment of the *Contractor's* performance in the final Contract Month and will reflect actual performance in the final month of the *services period*.
- 2.5 A balancing payment will be paid to the *Contractor* for Monthly Disbursement, and Tasks which have reached Task Completion within the final month of the *services period*.

CALCULATION OF THE INDEXED MONTHLY PAYMENT (IMP_n)

2.6 The Indexed Monthly Payment (IMP_n) in respect of a Contract Month “n” shall be calculated in accordance with the following formula:

$$IMP_n = (IMP_{ADn-1} + UMP_{ADn-1}) \times \frac{CPI_{AD}}{CPI_o} \quad (3)$$

where:

- CPI₀ Is:
- a) for the first Adjustment Date, the Payment Index for the Contract Month commencing at the *starting date*;
 - or
 - b) for each subsequent Adjustment Date, the Payment Index for the Contract Month commencing at the previous Adjustment Date.

CPI_{AD} is the Payment Index for the Contract Month commencing on the relevant Adjustment Date.

IMP_{ADn-1} is the Indexed Monthly Payment for the Contract Month prior to the relevant Adjustment Date. If this is for the first Adjustment Date then this will be taken as zero (0).

UMP_{ADn-1} is the Un-Indexed Monthly Payment for the Contract Month prior to the Adjustment Date.

2.7 If the index has not been published for the relevant Contract Month as required for this calculation then the last published value of the index available at the Adjustment Date shall be used.

CALCULATION OF THE PERFORMANCE DEDUCTION (PD_n)

2.8 The monthly performance deductions shall be a maximum of the Monthly Total Value at Risk for the relevant Contract Month.

2.9 The monthly adjustment in relation to performance deduction for the Contract Month “n” (PD_n) is the sum of the performance deductions for Month “n” for failure against the KPI for each aspect of performance in that month (PDKPI_{sn}), calculated in accordance with the following formula:

$$PD_n = \sum PD_{KPIsn} \quad (6)$$

2.10 PDKPI_{sn} shall be determined in accordance with the following formula:

$$PD_{KPIsn} = KSD_n \times R \quad (7)$$

where:

PDKPI_{sn} is the aggregate of the performance deductions for each of the KPI, against the KPI for each aspect of performance, for the Contract Month “n”

KSD_n is the KPI Service Deduction for each KPI for the Contract Month. This Deduction is applied to both the Indexed Monthly Payment and Un-Indexed Monthly Payment for Contract Month “n” and is detailed in Contract Schedule L and the Performance Adjustment Schedule; and

R is the Ratchet applied individually to each KPI with repeated or frequent failure, this will either be 1, 1.5, 1.75 or 2 and determined in accordance with mechanism below.

RATCHET

- 2.11 A ratchet will apply to the total value of KPI deductions for each aspect of performance for frequent or repeated failure of the KPI target (the "Ratchet").
- 2.12 The Ratchet is applied to the KPI for each aspect of performance and shall only apply once the aspect of performance against that KPI falls below the target stated in the Performance Adjustment Schedule.
- 2.13 The Ratchet is applied to the deduction for the relevant Contract Month. There are three levels of Ratchet, the application of which depends on frequency of repeated failures against the KPIs for the aspect of performance.
- 2.14 In the instance that either the aspect of performance has not experienced repeat or consecutive failure, or that the conditions for the ratchets outlined below are not applicable, the Ratchet will taken to be one (1).
- 2.15 Ratchet for 'Consecutive Failure':
 - 2.15.1 A repetition ratchet of 1.5 will be applied if any aspect of performance has failed the KPI for two (2) consecutive months the Ratchet will apply to the deduction for the second month.
 - 2.15.1 A repetition ratchet of 1.75 will be applied if any aspect of performance has failed the KPI for three (3) consecutive months the Ratchet will apply to the deduction for the third month.
 - 2.15.1 A repetition ratchet of 2 will be applied if any aspect of performance has failed the KPI for four (4) consecutive months the Ratchet will apply to the deduction for the fourth and every subsequent consecutive month.
- 2.16 Ratchet for 'Failure over a 12 month period':
 - 2.16.1 If in any 12 month rolling period the KPI for an aspect of performance is failed three (3) times a Ratchet of 1.5 will be applied to the deduction for the month in which the third occurrence occurs.
 - 2.16.1 If in any 12 month rolling period the KPI for a Service is failed four (4) or five (5) times a Ratchet of 1.75 will be applied to the deduction for the month in which the fourth and fifth occurrence occurs.
 - 2.16.1 If in any 12 month rolling period the KPI for a service is failed more than six (6) times a Ratchet 2 will be applied to the deduction for the month in which the sixth occurrence and for every subsequent occurrence within the 12 month rolling period occurs.
- 2.17 In the instance that there is an occurrence of both a 'Consecutive Failure' and a 'Failure over a 12-month period' and more than one Ratchet would apply the deduction and Ratchet resulting in the highest deductions will be used.

3.0 EXTENSION TO SERVICE PERIOD

- 3.1 Where the *Service Manager* instructs an extension to the *service period*, the Prices for the compensation event shall:
 - 3.1.1 be calculated on a pro-rata basis using the Prices in the Price List and adjusted for indexation using the Payment Index; and
 - 3.1.1 be apportioned to the Monthly Payment as part of the Un-Indexed Monthly Payment.

4.0 BEDDING IN PERIOD

- 4.1 The *Contractor* will be expected to be fully mobilised prior to the *starting date*. As such deductions will apply from the *starting date* and no bedding in period will apply.

CONTRACT SCHEDULE P – Not Required